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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 NICO CRUZ SANCHEZ, individually and on) Case No.: 1:20-cv-1510 JLT EPG
12 behalf of other members of the general public)
13 similarly situated,) ORDER GRANTING PLAINTIFF'S MOTION
14) FOR FINAL APPROVAL OF THE CLASS
15) ACTION AND PAGA SETTLEMENT
16)
17)
18)
)
)
MOHAWK INDUSTRIES, INC.; DAL TILE)
SERVICE, INC.; DAL-TILE SERVICES, INC.;)
DAL-TILE CORPORATION,)
)
)
Defendants.)
)
)

19 Nico Cruz Sanchez asserts the defendants—including Mohawk Industries, Inc.; Dal-tile
20 Service, Inc.; Daltile Service, and Inc.; Dal-tile Corporation—failed to comply with California's wage
21 and hour laws. (*See generally* Doc. 69.) Plaintiff seeks final approval of a class settlement reached in
22 this action. In addition, Plaintiff seeks attorneys' fees and costs from the settlement fund, costs for
23 settlement administration, and a service payment to the class representative. (Doc. 82.) Defendants do
24 not oppose the request, and no class members submitted objections to the settlement terms. The Court
25 found the matter suitable for decision without oral arguments pursuant to Local Rule 230(g) and
26 vacated the final approval and fairness hearing.

27 Because Plaintiff carries his burden to demonstrate certification of the Settlement Class is
28 appropriate under Rule 23 of the Federal Rules of Civil Procedure—and the terms of the settlement are

1 fair, reasonable, and adequate—the request for final approval of the Settlement is **GRANTED**. The
 2 request for attorneys' fees is granted in the modified amount of **\$475,000.00**; litigation expenses are
 3 awarded in the amount of **\$20,897.01**; settlement administration costs are awarded in the amount of
 4 **\$8,837.00**; and Plaintiff's service payment as the class representative is granted in the modified
 5 amount of **\$5,000.00**.

BACKGROUND

7 Nico Cruz Sanchez was employed as a warehouse associate from approximately September
 8 2016 to December 2018. (Doc. 70-2 at 11, ¶ 2.4.) He alleges that “Defendants, jointly and severally,
 9 employed [him] as an hourly-paid, non-exempt employee.” (Doc. 69 at 12, ¶ 28.) He contends,
 10 “Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
 11 employees within the State of California.” (*Id.* at 13, ¶ 35.)

I. Plaintiff's Allegations

13 Plaintiff asserts he worked more than eight hours in a day and “in excess of forty … hours in a
 14 week performing work duties off-the-clock.” (Doc. 69 at 20, ¶ 64.) He contends that he, and other
 15 employees, were required “to wait in line to clock in.” (*Id.*) Plaintiff alleges, “Defendants had a policy
 16 and practice of turning off the computers and requiring Plaintiff and other class members to start-up …
 17 the computers and wait several minutes prior to being able to clock in.” (*Id.*, ¶ 65.) He asserts they
 18 waited “several minutes to clock-in and clock-out due to the limited amount of available and operating
 19 machines and the line that would form due to other employees waiting to clock-in or clock-out at the
 20 same time.” (*Id.* at 20-21, ¶ 65.)

21 Plaintiff alleges Defendants also violated California law by failing to provide proper meal and
 22 rest breaks. (Doc. 69 at 22-26, ¶¶ 73-80, 86-92.) He asserts Defendants required him to work for
 23 more than five hours “without an uninterrupted meal period of not less than thirty minutes… and/or
 24 rest period.” (*Id.*, ¶ 74.) Plaintiff contends, “meal periods were often missed, shortened, late, and/or
 25 were interrupted because Defendants required them continue to work on orders if it was too busy.”
 26 (*Id.*, ¶ 75.) He also asserts, “Defendants interrupted Plaintiff and the other class members during
 27 purported meal periods with business-related inquiries, instructions for tasks, and/or to require them to
 28 return to work before a full thirty … minutes elapsed to complete or begin tasks.” (*Id.*, ¶ 76.)

1 Similarly, Plaintiff contends the “rest periods were missed, shortened, late, and/or were interrupted
2 because Defendants required them to continue to work and did not provide actual rest breaks that were
3 uninterrupted and off duty, noting that the employees will stop every now and then and talk.” (*Id.* at
4 25, ¶ 88.) Plaintiff reports he “did not take any uninterrupted rest period of no less than ten... minutes
5 while working for Defendants.” (*Id.*) Plaintiff alleges Defendants did not pay the premiums required
6 under California law for the failure to provide compliant rest and meal breaks. (*Id.* at 9, ¶ 19.)

7 According to Plaintiff, “Defendants failed to pay minimum wage” because the work required
8 during the interrupted breaks and off-the-clock was unpaid. (Doc. 69 at 27, ¶ 96.) He contends that he
9 and the similarly situated employees “are entitled to recover the unpaid balance of their minimum wage
10 compensation as well as interest....” (*Id.* at 28, ¶ 97.)

11 Plaintiff alleges Defendants failed to timely pay him all wages due during the course of his
12 employment. (Doc. 69 at 30-31, ¶¶ 108-111.) He contends Defendants also failed to reimburse him
13 “for all necessary business-related expenses and costs” during his employment, such as the use of his
14 “personal phone for business-related purposes.” (*Id.* at 36, ¶¶ 130-131.) In addition, Plaintiff asserts
15 that after his termination, Defendants failed to pay all “wages, earned and unpaid, immediately at the
16 time of [his] discharge.” (*Id.* at 29, ¶ 102.) He contends Defendants also failed to timely pay all wages
17 due to individuals “who quit their employment.” (*Id.*, ¶ 103.)

18 Further, Plaintiff asserts that Defendants “intentionally and willfully failed to provide [him] and
19 the other class members with complete and accurate wage statements,” as a result of the alleged
20 violations of California labor law. (Doc. 69 at 32, ¶ 115.) He alleges, “Defendants had the information
21 necessary to provide [accurate] wage statements ... yet failed to do so on a systematic basis and instead
22 provided wage statements that did not reflect the time worked off the clock or any meal and rest period
23 premiums earned.” (*Id.* at 32-33, ¶ 115.) Plaintiff contends the wage statements did not “accurately
24 reflect[] the total number of hours actually worked and the actual gross and net wages that were
25 earned.” (*Id.* at 33, ¶ 115.)

26 Plaintiff reports that he “requested copies of his employment records, including, but not limited
27 to, his payroll records” on May 15, 2019. (Doc. 69 at 25, ¶ 123.) He asserts, “Defendants did not
28 produce all employment records required pursuant to California Labor Code sections 432, 226, and

1 1198.5.” (*Id.*, ¶ 124.) Plaintiff alleges, “upon information and belief, Defendants have failed to keep
 2 ... accurate and complete payroll records, among other things.” (*Id.*)

3 **II. Litigation History**

4 On September 14, 2020, Plaintiff initiated this action by filing a complaint on behalf of himself
 5 and others similarly situated in Fresno County Superior Court, Case No. 20CECG02675. (Doc. 1-2.)
 6 Defendants filed a notice of removal, invoking this Court’s jurisdiction under the Class Action
 7 Fairness Act. (Doc. 1 at 2.) The Court denied Plaintiff’s motion to remand on January 10, 2022.
 8 (Docs. 7, 18.) The Court then issued a scheduling order, opening class discovery and setting a briefing
 9 schedule regarding any motion for class certification. (Doc. 31.)

10 On August 24, 2022, Plaintiff filed an amended complaint against Defendants raising the
 11 following causes of action: (1) unpaid overtime, (2) unpaid meal periods, (3) unpaid rest periods, (4)
 12 failure to pay minimum wages, (5) failure to timely pay wages due during employment, (6) failure to
 13 timey pay final wages, (7) non-complaint wage statements, (8) failure to keep requisite payroll
 14 records, (9) unreimbursed business expenses, and (10) violations of Cal. Bus. & Prof. Code §§ 17200.
 15 (*See generally* Doc. 40.) Plaintiff indicated the claims were brought on his own behalf and all others
 16 similarly situated, including: “[a]ll current and former hourly-paid or non-exempt employees who
 17 worked for any of the Defendants within the State of California at any time during the period from
 18 September 15, 2016 to final judgment and who reside in California.” (*Id.* at 4, ¶¶ 14-15.)

19 The parties engaged in discovery, including both informal information exchanges and
 20 propounded formal discovery requests. (Doc. 70 at 18; Doc. 71 at 11, ¶ 26.) Plaintiff reports that
 21 counsel “reviewed and analyzed thousands of pages of documents and data Defendants produced.”
 22 (Doc. 70 at 18.) According to Plaintiff, the discovery included: “employment records; a detailed
 23 sampling of Class Members’ time and pay data, including... spreadsheets of timecard and wage
 24 statement statistics; Defendants’ Employee Handbooks, agreements, forms, and policy and procedure
 25 documentation.” (*Id.*) The parties also engaged experts, who performed data analysis. (Doc. 70 at 24;
 26 Doc. 70-1 at 17, ¶ 46.)

27 **A. Settlement proceedings**

28 The parties participated in a mediation session with David Rotman, Esq., on June 20, 2023.

1 (Doc. 70-1 at 11, ¶ 27.) Although the matter did not settle at that time, the parties “continued to discuss
 2 potential resolution of this case subsequent to the mediation, including requesting, receiving, and
 3 analyzing further data and production.” (*Id.* at 11-12, ¶ 29.) The parties participated in a second
 4 mediation with Jeffrey Fuchsman, Esq., on January 12, 2024. (*Id.* at 12, ¶ 29.) Mr. Fuchsman prepared
 5 a Mediator’s Proposal, which all parties accepted by January 17, 2024. (*Id.*) To effectuate terms of the
 6 settlement, the parties stipulated that Plaintiff may file a second amended complaint, to add a claim for
 7 penalties under California’s Private Attorney General Act. (Doc. 67 at 5, § T.) The parties indicated
 8 that, for settlement purposes only, Defendants agreed to “not assert a statute of limitations defense to
 9 Plaintiff’s PAGA claim.” (*Id.*, § U.) The Court approved the stipulation (Doc. 68), and Plaintiff filed
 10 his SAC with the additional PAGA claim on April 15, 2024 (Doc. 69).

11 The parties executed the written agreement in May 2024. (Doc. 70-2 at 2-32.) Plaintiff filed an
 12 unopposed motion for preliminary approval of the class and PAGA settlement. (Doc. 70.) The Court
 13 granted preliminary approval of the settlement terms on October 23, 2024. (Doc. 73 at 10-34, 42.) The
 14 Court appointed Nico Cruz Sanchez as Class Representative and authorized his request for an incentive
 15 payment “up to the amount of \$10,000, subject to a petition and review” when seeking final approval.
 16 (*Id.* at 42; *see also id.* at 30-31.) The Court appointed Arby Aiawazian, Joanna Ghosh, Brian St. John,
 17 and LippSmith LLP as Class Counsel, who were authorized seek fees up to \$665,000—which is 35% of
 18 the settlement fund—and litigation expenses up to \$23,000, also subject to review at the final approval
 19 stage. (*Id.* at 23, 42.) Simpluris, Inc., was appointed the Settlement Administrator and authorized to
 20 seek up to \$9,000 for administrative costs. (*Id.* at 34-35, 42-43.) Finally, the Court also preliminarily
 21 approved the PAGA settlement and anticipated payments to the LWDA and aggrieved employees. (*Id.*
 22 at 32-34, 42.)

23 On October 31, 2024, the Court approved the “Notice of Class Action Settlement.” (Doc. 75;
 24 *see also Doc. 74-1.*) The Class Notice informed the Class Members of the nature of the action, the
 25 class definition preliminarily approved by the Court, the issues to be resolved, claims released by
 26 participating class members, representation by counsel, deadlines for exclusion and objections, and the
 27 binding effect of judgment. (*See Doc. 74-1; see also Doc. 75.*)

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1 **B. Service of the Class Notice and responses received**

2 Mary Butler, a project manager for the Settlement Administrator, reports Defendants originally
 3 provided data that included 549 individuals as Class Members, of which there were also 451 PAGA
 4 Aggrieved Employees. (Doc. 82-4 at 4, Butler Decl. ¶¶ 6, 8.) On November 15, 2024, the Settlement
 5 Administrator mailed the Notice to the Class Members and Aggrieved Employees, with addresses
 6 provided either by Defendant or the National Change of Address Database. (*Id.*, ¶¶ 7-8.) Ms. Butler
 7 reports that if the Postal Service returned a Class Member’s Notice as undeliverable and without the
 8 forwarding address, then “Simpluris performed an advanced address search (i.e. skip trace) on all of
 9 these addresses by using Accurint, a reputable research tool owned by Lexis-Nexis.” (*Id.* at 4, ¶ 9.)
 10 According to Ms. Butler, Simpluris located updated addresses for 28 individuals and re-mailed the
 11 Class Notice. (*Id.*) The Class Notice remained undeliverable for 7 individuals. (*Id.*)

12 On January 24, 2025, Defendants notified the Settlement Administrator that after Simpluris
 13 mailed the Class Notices, two individuals were inadvertently omitted from the class list previously
 14 provided (“the Omitted Class Members”). (Doc. 82-4 at 4, ¶ 8.) Upon learning this information, “the
 15 Settlement Administrator determined that it would cost an additional \$6,745.14 to fund the amounts
 16 due to the Omitted Class Members, using the same formulas used to calculate payments in the Notice
 17 provided to [other] Class Members.” (Doc. 76 at 4-5, ¶ N.) The Settlement Administrator also
 18 informed the parties that “additional costs associated administering the Settlement with respect to the
 19 Omitted Class Members[] will not exceed the amount allocated in the Preliminary Approval Order.”
 20 (*Id.* at 5, ¶ N.) In addition, Defendants “agreed to pay an additional \$6,745.14, plus Defendants’ share
 21 of any employer payroll taxes attributed to payment to the Omitted Class Members.” (*Id.*, ¶ O.)
 22 Pursuant to the stipulation, “Defendants will fund the \$6,745.14 in Settlement payments for the
 23 Omitted Class Members separately and in addition to the Maximum Settlement Amount, and this
 24 amount will be included in the final Net Settlement Amount that will be distributed to Class Members
 25 who do not opt out of the Settlement (i.e., Settlement Class Members), and the PAGA Aggrieved
 26 Employees.” (*Id.* at 6.)

27 The Court approved the stipulation of the parties in part and ordered “[t]he two Omitted Class
 28 Members shall be included in the Settlement.” (Doc. 77 at 2, emphasis omitted.) To allow the time

1 contemplated under the Settlement for the Omitted Class Members to respond to the Notice—including
 2 making any objections or request to opt out of the class—the Court continued the final approval and
 3 fairness hearing date. (*Id.* at 2.) The Court ordered the parties to revise the previously approved Notice
 4 to include updated response deadlines for the Omitted Class members and directed the Settlement
 5 Administrator to mail the Notice to the Omitted Class Members no later than February 18, 2025. (*Id.*)
 6 Ms. Butler filed a supplemental declaration, reporting that Simpluris provided the notice as ordered,
 7 and neither Notice was returned as undeliverable. (Doc. 86 at 3, Butler Supp. Decl. ¶ 7.)

8 The Settlement Administrator did not receive any requests from exclusion, from either the
 9 Notice mailing or the subsequent Notice to Omitted Class Members. (Doc. 82-4 at 6, ¶ 3; Doc. 8 at 3,
 10 ¶ 9.) No one disputed the number of workweeks identified in the Notice for purposes of calculating
 11 the settlement shares of the participating class members and aggrieved employees. (Doc. 86 at 3, ¶ 11;
 12 *see also* Doc. 82-4 at 5, ¶ 16.) Finally, neither the Settlement Administrator nor the Court received
 13 objections to the Settlement. (Doc. 86 at 3, ¶ 10; *see also* Doc. 82-4 at 6, ¶ 15.)

14 C. Pending final approval

15 Plaintiff now seeks final approval of the Settlement, including: (1) attorneys' fees and costs for
 16 Class Counsel, (2) a service award for Plaintiff as the Class Representative, (3) and costs of settlement
 17 administration. (Doc. 82.) Defendants filed a statement indicating they "have no opposition" to the
 18 motion for final approval of the class action and PAGA settlement. (Doc. 84.)

19 **SETTLEMENT TERMS**

20 Pursuant to the "Joint Stipulation of Class Action and PAGA Settlement" ("the Settlement"),
 21 the parties agree to a gross settlement amount of \$1,906,745.14¹ for the class defined as: "all current
 22 and former hourly-paid or non-exempt employees who worked for any of the Defendants within the
 23 State of California at any time during the period from September 15, 2016, through April 11, 2024, ...
 24 and who reside in California."² (Doc. 70-2 at 2, ¶ 1.3; *id.* at 7, ¶ 1.18.) In addition, the Settlement
 25

26 ¹ The original settlement was for \$1,900,000.00. However, as discussed above, Defendants agreed to fund an
 27 additional \$6,745.14 upon discovery of two Omitted Class Members. (Doc. 76 at 5.) Thus, the gross settlement
 now totals \$1,906,745.14. (Doc. 82-4 at 5, ¶ 18; *see also* Doc. 83 at 2, St. John. Supp. Decl. ¶ 3.)

28 ² The Class Period is defined as "September 15, 2016 through April 11, 2024, or through the Preliminary
 Approval Date (whichever is earlier)." (Doc. 70-2 at 4, ¶ 1.6.) Accordingly, the Court adopts the earlier date.

1 includes an “escalator clause,” under which the gross settlement amount may be increased if the actual
 2 number of workweeks for all class members increases by more than 10% over the estimated 86,162
 3 workweeks included in the Class Period.³ (*Id.* at 3, ¶ 1.3.) Defendants agreed to deliver the gross
 4 settlement amount to an escrow account of the proposed administrator within ten days of executing the
 5 Settlement. (*Id.* at 24, ¶ 4.11.1.)

6 **I. Payment Terms**

7 The gross settlement fund will cover payments to class members, with additional compensation
 8 to Plaintiff as the class representative. (Doc. 70-2 at 7, ¶ 1.18.) In addition, the Settlement provides for
 9 payments to Class Counsel for attorneys’ fees and expenses, to the Settlement Administrator, and the
 10 California Labor & Workforce Development Agency. (*Id.*; *see also id.* at 9, ¶ 1.31.) Specifically, the
 11 Settlement provides for the following payments from the gross settlement amount:

- 12 • The Class Representative will receive a service payment up to \$10,000;
- 13 • Class counsel will receive up to \$665,000.00 for attorneys’ fees and
 litigation expenses up to \$23,000;
- 14 • The California Labor and Workforce Development Agency shall receive
 \$75,000 from the total PAGA payment of \$100,000, with the remainder
 distributed to aggrieved employees; and
- 15 • The Settlement Administrator will receive up to \$9,000 for fees and
 expenses.

16 (*Id.* at 7, ¶ 1.18; *id.* at 9, ¶ 1.31.) After these payments, the remaining money (“Net Settlement
 17 Amount”) will be distributed to class members. (*Id.* at 7, ¶ 1.18.) With the identified payments from
 18 the gross fund, the Settlement Administrator reports the anticipated Net Settlement Amount is
 19 \$1,099,808.14, including the additional funds for the Omitted Class Members. (Doc. 82-4 at 5, Butler
 20 Decl. ¶ 18.) The parties agreed that the fund is “non-reversionary,” and “under no circumstances will
 21 there be any reversion to Defendants of any funds” from the “Maximum Settlement Amount” or gross
 22 settlement. (Doc. 70-2 at 25, ¶ 4.11.12.)

23 Class members are not required to submit a claim to receive a share from the Net Settlement
 24 Amount. (Doc. 70-2 at 16, ¶ 4.2.1; *see also id.* at 46-47.) Class members’ shares will be distributed
 25

26 ³ This Settlement Administrator now reports the escalator clause was not triggered. (Doc. 82-4 at 4, ¶ 10.)

1 on a *pro rata* basis, based upon their number of workweeks during the relevant period. (*Id.*, ¶ 4.2.2.)

2 The Settlement provides:

3 Each Class Member's Individual Payment Amount shall be calculated by
 4 (i) dividing the Settlement Class Member's total number of workweeks
 5 worked for Defendants in California during the Class Period by the total
 6 number of workweeks worked by all Settlement Class Members for
 7 Defendants during the Class Period, and (ii) multiplying that pro rata share
 8 by the allocated amount of the Net Settlement Amount. Any workweeks
 9 during the Class Period in which a Settlement Class Member did not
 10 actually work (for example, while on a leave of absence, etc.) are not
 11 included in calculating that Settlement Class Member's Individual
 12 Payment Amount. The calculation of a Settlement Class Member's total
 13 workweeks worked in California shall be construed from Defendants'
 14 records. Each Settlement Class Member's Individual Payment Amount
 15 shall be distributed to that Settlement Class Member, less applicable
 16 withholdings attributed to the portion of Individual Payment Amounts
 17 designated as wages.

18
 19 Of the PAGA Penalty Payment of \$100,000.00, 25%, or \$25,000.00, will
 20 be distributed among the PAGA Aggrieved Employees, even if the
 21 employee opts out of the class settlement. The PAGA Aggrieved
 22 Employees' share of the \$25,000.00 of the PAGA Penalty Payment shall
 23 be calculated by (i) dividing the aggrieved employee's total number of
 24 workweeks worked for Defendants in California during the PAGA Period
 25 by the total number of workweeks worked by all aggrieved employees for
 26 Defendants during the PAGA Period, and (ii) multiplying that pro rata
 27 share by the allocated amount of the \$25,000.00. Any workweeks during
 28 the PAGA Period in which an aggrieved employee did not actually work
 29 (for example, while on a leave of absence, etc.) are not included in
 30 calculating that aggrieved employee's PAGA payment. The calculation of
 31 an aggrieved employee's total workweeks worked in California shall be
 32 construed from Defendants' records.

33
 34 (*Id.*) Thus, the exact amount settlement class members receives depends upon how many weeks they
 35 worked for Defendants, and whether they are entitled to a portion allocated for the release of PAGA
 36 claims. With a class of 551 individuals, the Settlement Administrator reports that the average share of
 37 the Net Settlement Amount is approximately \$1,996.20, the highest anticipated payment is \$5,621.05,
 38 and the lowest payment expected is \$14.19. (Doc. 82-4 at 5, Butler Decl. ¶ 19.) Defendants also
 39 agreed to separately pay the employer-side taxes for these payments made to Class Members. (Doc.
 40 70-2, ¶¶ 1.18, 4.3.1; *see also* Doc. 76 at 5, ¶ O.)

41
 42 The Settlement Administrator will distribute the payments by mailing checks to all
 43 participating class members and aggrieved employees. (Doc. 70-2 at 25, ¶ 4.11.3.) Checks must be
 44 cashed within 90 days of the mailing. (*Id.*, Settlement ¶ 4.11.4.) If any check remains uncashed after

1 the 90-period, the check will be cancelled and voided. (*Id.*) The Settlement Administrator shall
 2 redistribute the uncashed funds to those “who cashed their payments from the initial distribution of
 3 Settlement Proceeds,” with the same *pro rata* calculation methods. (*Id.*) If checks from the second
 4 distribution are not cashed, the funds will not revert to Defendants. (*Id.*) Rather, the Settlement
 5 Administrator will cancel and void the uncashed checks, and the money will be distributed to a *cy pres*
 6 beneficiary—who the parties propose shall be Legal Aid at Work—“or shall otherwise be distributed
 7 as ordered by the Court.” (*Id.*)

8 **II. Releases**

9 The Settlement provides that Plaintiff and class members, other than those who elect not to
 10 participate in the Settlement, release Defendants⁴ from claims “from September 15, 2016, through the
 11 date of preliminary approval.” (Doc. 70-2 at 9, ¶ 1.27.) The “Released Claims” are defined as:

12 all claims, demands, rights, liabilities, and causes of action that were pled
 13 in any of the complaints in the Action or could have been pled based on
 14 the facts alleged in any of the complaints in the Action, based on
 15 Defendants’ alleged (1) failure to pay all overtime in violation of
 16 California Labor Code sections 510, 1194 and 1198 and the applicable
 17 IWC Wage Orders; (2) failure to provide proper meal periods, or premium
 18 pay for non-compliant meal periods, in violation of California Labor Code
 19 sections 226.7 and 512 and the applicable IWC Wage Orders; (3) failure
 20 to authorize and permit rest periods, or premium pay for non-compliant
 21 rest periods, in violation of California Labor Code section 226.7 and the
 22 applicable IWC Wage Orders; (4) failure to pay minimum wages in
 23 violation of California Labor Code sections 1194, 1194.2, 1197, and
 24 1197.1 and the applicable IWC Wage Orders; (5) failure to pay all wages
 on termination of employment in violation of California Labor Code
 sections 201, 202, and 203; (6) failure to pay timely wages during
 employment in violation of California Labor Code sections 204; (7) failure
 to provide accurate wage statements in violation of California Labor Code
 section 226 and the applicable IWC Wage Orders; (8) failure to maintain
 requisite payroll records in violation of California Labor Code sections
 226, 432, 1174, and 1198.5; (9) unreimbursed business expenses in
 violation of Labor Code sections 2800 and 2802; (10) all claims for unfair
 business practices that could have been premised on the facts, claims,
 causes of action or legal theories described above; and (11) all claims
 under the PAGA that could have been premised on the facts, claims,
 causes of action or legal theories described above.

25
 26 ⁴ The Settlement defines “Releasees” as including “Defendants and their present and former parent companies,
 27 subsidiaries, affiliates, and joint ventures, and each of their respective present and former officers, directors,
 28 controlling stockholders, agents, affiliates, employees, insurers, co-insurers, reinsurers, attorneys, including legal
 counsel herein, accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans,
 plan fiduciaries, administrators, trustees, general and limited partners, predecessors, successors and assigns, and
 the spouse of each of the foregoing who is a natural person.” (Doc. 70-2 at 9, ¶ 1.28.)

1 (*Id.* at 8-9, ¶ 1.27.)

2 For individuals who are “aggrieved employees” under PAGA, the released claims include: “all
 3 PAGA claims and claims for PAGA penalties alleged in any iteration of the complaints filed by
 4 Plaintiff, and any letter submitted to the LWDA by Plaintiff seeking authorization to pursue PAGA
 5 claims which occurred during the PAGA Period.” (Doc. 70-2 at 7, ¶ 1.22.) Even if an aggrieved
 6 employee opts out of the class settlement, he or she will still be bound by the PAGA Release, which
 7 covers the period from September 15, 2019 to the Preliminary Approval date. (*Id.*, ¶¶ 1.21, 1.22.)
 8 However, this release “does not cover an aggrieved employee’s individual Labor Code claims” and
 9 “expressly excludes claims for vested benefits, wrongful termination, unemployment insurance,
 10 disability, social security, workers’ compensation, and PAGA claims arising after the end of the
 11 PAGA Period.” (*Id.* at 7-8, ¶ 1.22.)

12 The release for Plaintiff encompasses more claims than those identified for Settlement Class
 13 Members and the PAGA Members, because he agreed to release additional claims that could have
 14 arisen during the course of his employment with Defendants, whether known or unknown. (Doc. 70-2
 15 at 4-5, ¶ 1.8.) Plaintiff’s release encompasses:

16 all claims, obligations, demands, actions, rights, causes of action, and
 17 liabilities against the Releasees, based on the facts as set forth in the
 18 Second Amended Complaint filed on April 15, 2024, whether in law or
 19 equity, whether sounding in tort, contract, federal, state and/or local law,
 20 statute, ordinance, regulation, common law, or other source of law, whether
 21 known or unknown, and whether anticipated or unanticipated, including
 22 unknown claims covered by Civil Code § 1542 (as quoted in Paragraph
 23 4.12.2) by the Class Representative, arising during the period from the
 24 beginning of the Class Representative’s dates of employment with
 25 Defendants to the date on which the Court enters an order granting final
 26 approval of this Settlement, for any type of relief, including, without
 27 limitation, claims for wages, business expenses, damages, unpaid costs,
 28 penalties (including civil and waiting time penalties), liquidated damages,
 punitive damages, interest, attorneys’ fees, litigation costs, restitution, or
 equitable relief with the sole exception of any claims which cannot be
 released as a matter of law. The Class Representative’s Released Claims
 include, but are not limited to, the Released Claims as well as any other
 claims under any provision of the Fair Labor Standards Act, any provision
 of the California Labor Code or any applicable California Industrial
 Welfare Commission Wage Orders, all claims for statutory penalties that
 could have been sought by the Labor Commissioner for the violations
 identified in Plaintiff’s pre-filing letter to the LWDA, and claims under
 state or federal discrimination statutes, including, without limitation, the
 California Fair Employment and Housing Act, California Government
 Code § 12940 et seq.; the Unruh Civil Rights Act, California Civil Code §
 51 et seq.; the California Constitution; Title VII of the Civil Rights Act of

1964, 42 U.S.C. § 2000 et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; California's PAGA (Cal. Labor Code § 2698, et seq.); Cal. Bus. and Prof. Code § 17200 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; any IWC California Wage Orders and California Code of Regulations, Title 8, section 11000, et seq.; and/or any other federal, state or local human rights, civil rights, wage-hour, pension or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or any claim of retaliation under such laws, or any claim of breach of any contract (whether express, oral, written or implied from any source), or any claim of intentional or negligent infliction of emotional distress, tortious interference with contractual relations, wrongful or abusive or constructive discharge, defamation, *prima facie* tort, fraud, negligence, loss of consortium, malpractice, breach of duty of care, breach of fiduciary duty; and all of their implementing regulations and interpretive guidelines.

(Doc. 70-2 at 4-5, ¶ 1.8.) Thus, claims released by Plaintiff—but not the Settlement Class—include any claims arising under the Americans with Disabilities Act, Title VII, 42 U.S.C. § 1981, and ERISA. Indeed, the Settlement indicates Plaintiff makes a general release “to the fullest extent permitted by law, the provisions, rights, and benefits he may otherwise have had pursuant to California Civil Code section 1542.” (*Id.* at 26, ¶ 4.12.2.) Plaintiff acknowledged that the waiver of the provisions of Section 1542 was “an essential and material term” of the Settlement, which “would not have been entered without such a waiver from Plaintiff.” (*Id.*, ¶ 4.12.3.)

III. Objections and Opt-Out Procedures

Class members are not required to take any action to receive a settlement payment. (Doc. 82-4 at 9 [notice originally mailed to Class Members]; Doc. 86 at 7 [notice to the Omitted Class Members].) However, any class member who wished had the opportunity to submit objections to the Settlement terms or request exclusion from the Settlement. (Doc. 70-2 at 20-22, ¶¶ 4.6.3- 4.6.10; *see also* Doc. 82-4 at 10-11; Doc. 86 at 7-8.)

Individuals who wished to be excluded from the Settlement Class were required to submit a “Request for Exclusion” that included their “full name, address, and telephone number, the name and case number of the Action, and shall be signed by the Class Member.” (Doc. 70-2 at 20, ¶ 4.6.3.) The Notice informed individuals: “If you exclude yourself from the settlement, you will not be entitled to recover any settlement payment except your share of the PAGA settlement if you worked during the PAGA Period. You will also not be allowed to object to the settlement, but you will retain the right to bring any claims you may have against Defendants.” (Doc. 82-4 at 10; Doc. 86 at 8.) Requests for

1 Exclusion were to be mailed 45 days of the mailing of the Notice to be deemed timely. (Doc. 70-2 at
 2 21, ¶ 4.6.4; *see also id.* at 9, ¶ 1.29.)

3 Class Members could also object to the settlement terms by mailing a written statement to the
 4 Settlement Administrator within 45 days of the mailing of the Notice Packet. (Doc. 70-2 at 22, ¶ 4.6.8;
 5 *see also id.* at 9, ¶ 1.29.) An objection needed to include: (1) the case name and number; (2) the full
 6 name of the class member; (3) grounds for objection; (4) “any legal briefs, papers, or memoranda the
 7 objecting Class Member proposes to submit to the Court.” (*Id.* at 21, ¶ 4.6.7.) The Class Notice
 8 identified each of these requirements. (Doc. 82-4 at 10; Doc. 86 at 7.) Further, class members were
 9 informed that they could not both ask to be excluded *and* object to the Settlement terms. (*Id.*)

APPROVAL OF THE CLASS SETTLEMENT

10 When parties settle the action prior to class certification, the Court has an obligation to “peruse
 11 the proposed compromise to ratify both the propriety of the certification and the fairness of the
 12 settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003); *see also* Fed. R. Civ. P. 23(e)
 13 (“The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of
 14 settlement—may be settled, voluntarily dismissed, or compromised only with the court’s approval”).
 15 Approval of a class settlement is generally a two-step process. First, the Court must assess whether a
 16 class exists. *Id.* (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Second, the Court
 17 must “determine whether the proposed settlement is fundamentally fair, adequate, and reasonable.” *Id.*
 18 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 2998)). The decision to approve or
 19 reject a settlement is within the Court’s discretion. *Hanlon*, 150 F.3d at 1026.
 20

I. Certification of the Settlement Class⁵

21 Class certification is governed by Rule 23 of the Federal Rules of Civil Procedure, which
 22 provides that “[o]ne or more members of a class may sue or be sued as representative parties on behalf
 23 of all.” Fed. R. Civ. P. 23(a). Plaintiff seeks certification of Settlement Class defined as: “all current
 24 and former hourly-paid or non-exempt employees who worked for any of the Defendants within the
 25 State of California at any time during the period from September 15, 2016, through April 11, 2024, and
 26

27
 28 ⁵ Because the Court only provisionally certified the class upon preliminary approval of the Settlement, final
 certification of the Settlement Class is required.

1 who reside in California.” (Doc. 70-2 at 3, ¶ 1.3.)

2 **A. Rule 23(a) requirements**

3 Parties seeking class certification bear the burden of demonstrating the elements of Rule 23(a)
 4 are satisfied, and “must affirmatively demonstrate … compliance with the Rule.” *Wal-Mart Stores,*
 5 *Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *Doninger v. Pacific Northwest Bell, Inc.*, 563 F.2d 1304,
 6 1308 (9th Cir. 1977). The prerequisites of Rule 23(a) “effectively limit the class claims to those fairly
 7 encompassed by the named plaintiff’s claims.” *General Telephone Co. of the Southwest. v. Falcon*,
 8 457 U.S. 147, 155-56 (1982). Certification of a class is proper if:

- 9 (1) the class is so numerous that joinder of all members is impracticable;
 10 (2) there are questions of law or fact common to the class; (3) the claims
 or defenses of the representative parties are typical of the claims or
 defenses of the class; and (4) the representative parties will fairly and
 11 adequately protect the interests of the class.

12 Fed. R. Civ. P. 23(a). These prerequisites are generally referred to as numerosity, commonality,
 13 typicality, and adequacy of representation. *Falcon*, 457 U.S. at 156.

14 1. Numerosity

15 This prerequisite requires the Court to consider “specific facts of each case and imposes no
 16 absolute limitations.” *General Telephone Co. v. EEOC*, 446 U.S. 318, 330 (1980). Although there is
 17 not a specific threshold, joining more than one hundred plaintiffs is impracticable. *See Immigrant*
 18 *Assistance Project of Los Angeles Cnt. Fed’n of Labor v. INS*, 306 F.3d 842, 869 (9th Cir. 2002)
 19 (finding the numerosity requirement … “satisfied solely on the basis of the number of ascertained class
 20 members”); *Gay v. Waiters’ & Dairy Lunchmen’s Union*, 549 F.2d 1330, 1332 n.7 (9th Cir. 1977) (a
 21 proposed class with 110 members “clearly [included] a sufficient number to meet the numerosity
 22 requirements”). The Settlement Administrator reports the Settlement Class includes 551 individuals.
 23 (Doc. 82 at 17.) Therefore, joinder of all identified individuals is impracticable, and the numerosity
 24 requirement is satisfied.

25 2. Commonality

26 Rule 23(a) requires “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).
 27 To satisfy the commonality requirement, the plaintiff must demonstrate common points of facts and
 28 law. *See Wal-Mart Stores*, 564 U.S. at 350. Thus, “commonality requires that the class members’

1 claims depend upon a common contention such that determination of its truth or falsity will resolve an
 2 issue that is central to the validity of each claim in one stroke,” and the “plaintiff must demonstrate the
 3 capacity of classwide proceedings to generate common answers to common questions of law or fact
 4 that are apt to drive the resolution of the litigation.” *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581,
 5 588 (9th Cir. 2012) (internal quotation marks, citations omitted); *see also Parsons v. Ryan*, 754 F.3d
 6 657, 684 (9th Cir. 2014) (finding commonality satisfied where “[t]he factual and legal questions that
 7 [plaintiffs] present can be answered ‘yes’ or ‘no’ in one stroke as to the entire class, dissimilarities
 8 among class members do not impede the generation of common answers to those questions, and the
 9 capacity of classwide proceedings to drive the resolution of this litigation cannot be doubted”).

10 Plaintiff argues the commonality requirement is satisfied because “class members share
 11 common questions of law and fact.” (Doc. 70 at 27, emphasis omitted.) He asserts:

12 Defendants’ policies and practices concerning overtime and meal
 13 break/rest periods implicate the class members’ claims as a whole. Based
 14 on documents and information obtained through formal and informal
 15 discovery and exchange of information for mediation, Plaintiff contends
 16 all Class Members were subject to the same or similar job duties and
 17 uniform operations and employment practices, policies, and procedures
 18 during the Class Period. Plaintiff’s claims arise from Defendants’ uniform
 policy and systematic scheme, as to Plaintiff and Class Members, of
 failing to pay regular, minimum, and overtime wages properly; failing to
 pay all compensation due for work performed; failing to provide
 compliant meal and rest periods and associated premium pay; and failing
 to reimburse Plaintiff and Class Members for necessary business-related
 expenses.

19 (Doc. 70 at 27-28, citing St. John Decl. ¶ 27 [Doc. 70-3 at 20]; LippSmith Decl. ¶ 24 [Doc. 70-1 at
 20 10].) In addition, Plaintiff asserted that Defendant “uniformly failed to pay all Class Members all
 21 compensation due to them during the Class Period.” (*Id.* at 28.)

22 Because it appears resolution of the identified issues—including whether Defendants’ wages,
 23 breaks, and payroll practices and policies violated California law—apply to the claims of each of the
 24 class members, the Court finds the commonality requirement is satisfied for purposes of settlement.

25 3. Typicality

26 This requirement demands that the “claims or defenses of the representative parties are typical
 27 of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality ensures “the interest[s] of
 28 the named representative align[] with the interests of the class.” *Torres v. Mercer Canyons Inc.*, 835

F.3d 1125, 1141 (9th Cir. 2016) (citation omitted). A claim or defense is not required to be identical, but rather “reasonably coextensive” with those of the absent class members. *Hanlon*, 150 F.3d at 1020. “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation marks, citation omitted); *see also Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir. 1995) (the typicality requirement is satisfied when named plaintiffs have the same claims as other members of the class and are not subject to unique defenses).

Plaintiff asserts that “[h]is claims and defenses are typical of the class.” (Doc. 70 at 29.) He reports Defendants employed him “as an hourly-paid, non-exempt employee from September 2016 to approximately December 2018.” (Doc. 70-4 at 2, Sanchez Decl. ¶ 2.) Plaintiff contends his “individual claims align with those of the Class,” based upon Defendants’ alleged “uniform, unlawful practices and procedures.” (Doc. 70 at 29.) Thus, even if not a class representative, Plaintiff would be a member of the Settlement Class. Because Plaintiff was subjected to the same company policies and payment procedures as the class members—and there are no unique defenses asserted by either party at this time—the Court finds the typicality requirement is satisfied for purposes of settlement.⁶ *See Hanon*, 976 F.2d at 508; *Kayes*, 51 F.3d at 1463.

4. Fair and Adequate Representation

Absentee class members must be adequately represented for judgment to be binding upon them. *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940). This prerequisite is satisfied if the representative party “will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “[R]esolution of this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000) (citing *Hanlon*, 150 F.3d at 1020).

⁶ To the extent Defendants may have raised a defense to Plaintiff’s PAGA claim, for settlement purposes only, Defendants agreed to “not assert a statute of limitations defense to Plaintiff’s PAGA claim.” (Doc. 67 at 5, § U.) Based upon Defendants’ stipulation, the Court finds the potential defense to Plaintiff’s PAGA claim does not thwart his appointment as a class representative for the Settlement Class.

1 *a. Class representative*

2 The Court conditionally appointed Plaintiff as the class representative for the Settlement Class.
 3 (Doc. 73 at 42.) Graham LippSmith reports that Plaintiff “vigorously pursued claims” on behalf of the
 4 class. (Doc. 70-1 at 15-16, ¶ 43.) Mr. LippSmith asserts: “Plaintiff followed case progress and
 5 provided both documents concerning his employment with Defendants and information about non-
 6 exempt employees’ duties. Plaintiff reviewed documents and answered all our questions. Plaintiff also
 7 helped develop strategies by pinpointing documents and information to obtain from Defendants,
 8 identifying potential witnesses, and describing Defendants’ policies, practices, and procedures.” (*Id.*)
 9 Likewise, Brian St. John asserts that “Plaintiff has spent a substantial amount of time and effort
 10 gathering and producing relevant documents and information, providing the facts and evidence
 11 necessary to attempt to prove the allegations, and discussing their employment with counsel.” (Doc.
 12 70-3 at 16, St. John Decl. ¶ 14.) According to Mr. St. John, “Plaintiff was available whenever counsel
 13 needed them and actively tried to obtain information that would benefit the prosecution of the case,
 14 including ... working with Class Counsel to prepare responses to discovery requests that were
 15 propounded on him by Defendants.” (*Id.*)

16 The parties did not identify any conflict between Plaintiff and the Settlement Class, and review
 17 of the allegations before the Court does not reveal any conflict. Based upon the information by
 18 counsel, Plaintiff endeavored to prosecute the claims on behalf others similarly situated. Moreover,
 19 the interests of Plaintiff are aligned with those of the class members: to maximize the recovery of pay
 20 not received due to the alleged violations of California wage and hour laws. Thus, Plaintiff satisfies
 21 the adequacy requirement of Rule 23(a).

22 *b. Class Counsel*

23 The Court appointed Arby Aiwasian, Joanna Ghosh, Brian St. John, and LippSmith LLP as
 24 Class Counsel when granting provisional certification of the Settlement Class. Brian St. John and
 25 Graham LippSmith provided declarations attesting to the experience of the attorneys seeking
 26 appointment as class counsel. (*See* Docs. 70-1, 70-3.)

27 Mr. St. John, an attorney with “Lawyers for Justice,” reports the organization “is comprised of
 28 attorneys who focus on litigating complex wage-and-hour class and Private Attorneys General Act ...

representative actions.” (Doc. 70-3 at 2, ¶ 2.) Mr. St. John reports he was admitted to practice in 2015 and “worked on many wage and hour class action and PAGA representative matters.” (*Id.*, ¶ 5.) This work included “researching and drafting pleadings, administrative notice exhaustion, drafting, negotiating, and finalizing stipulations and settlement agreements, engaging in motion practice, claims evaluation and analysis, and making court appearances.” (*Id.*) Arby Aiwazian and Joanna Ghosh were each admitted to practice law in 2010. (*Id.* at 3, ¶¶ 3-4.) Mr. Aiwazian worked on more than 100 “class action or representative action cases which have resulted in settlement.” (*Id.*, ¶ 3.) Ms. Ghosh “also has extensive experience with class action and/or representative action settlements,” and “has taken and defended dozens of depositions and successfully handled motion practice in class action cases regarding discovery (including and not limited to, regarding class contact information), class certification (both contested class certification and stipulated class certification), arbitration agreements, coordination, intervention.” (*Id.* at 3-4, ¶ 4.)

Mr. LippSmith reports, “LippSmith LLP is a four-attorney law firm with offices in Los Angeles and Honolulu,” and the attorneys “have collectively recovered hundreds of millions of dollars in complex cases against the largest companies in the world.” (Doc. 70-1 at 2, ¶ 4.) Mr. LippSmith reports that was licensed to practice in 2002, and he has “managed hundreds of cases in the class action, mass tort, consumer, personal injury, business, insurance, intellectual property, and entertainment practice areas.” (*Id.* at 3, ¶ 6.) In addition, he reports that MaryBeth LippSmith, co-founder of LippSmith LLP, was also admitted to practice in 2002 and has written “appeals on class action, consumer litigation, mass tort, and serious personal injury matters; assisted trial lawyers with dispositive motions; and consulted private mediators on large, complex, high-profile matters in advance of mediation.” (*Id.*, ¶ 9.) According to Mr. LippSmith, the “LippSmith LLP team members have personally served as class counsel, putative class counsel, lead counsel, and committee counsel in more than dozens of class action and mass action lawsuits, representing tens of millions of plaintiffs and class members, collectively.” (*Id.* at 4, ¶ 14.)

The described litigation experience supports a conclusion that counsel prosecuted the action vigorously on behalf of the putative class when the action was filed and continued to do so for the Settlement Class. There are not any identified conflicts between the attorneys and the Settlement

1 Class. Further, Defendants did not oppose appointment of Class Counsel or otherwise assert the
 2 attorneys with LFJ and LippSmith LLP are inadequate to represent the interest of the Settlement Class.
 3 Therefore, the Court finds Class Counsel satisfy the adequacy requirement.

4 **B. Certification of a class under Rule 23(b)(3)**

5 For the foregoing reasons, the prerequisites of Rule 23(a) are satisfied by the Settlement Class.
 6 However, a class may only be certified if it is also maintainable under Rule 23(b). Fed. R. Civ. P.
 7 23(b); *see also Narouz v. Charter Communs., LLC*, 591 F.3d 1261, 1266 (9th Cir. 2010). Plaintiff
 8 asserts certification of the settlement class is appropriate under Rule 23(b)(3), which requires a finding
 9 that (1) “the questions of law or fact common to class members predominate over any questions
 10 affecting only individual members,” and (2) “a class action is superior to other available methods for
 11 fairly and efficiently adjudicating the controversy.” These two requirements are generally called the
 12 “predominance” and “superiority” requirements. *See Hanlon*, 150 F.3d at 1022-23; *see also Wal-Mart*
 13 *Stores*, 564 U.S. at 363 (“(b)(3) requires the judge to make findings about predominance and
 14 superiority before allowing the class”).

15 1. Predominance

16 The predominance inquiry focuses on “the relationship between the common and individual
 17 issues” and “tests whether proposed classes are sufficiently cohesive to warrant adjudication by
 18 representation.” *Hanlon*, 150 F.3d at 1022 (citing *Amchem Prods.*, 521 U.S. at 623). “[A] central
 19 concern of the Rule 23(b)(3) predominance test is whether ‘adjudication of common issues will help
 20 achieve judicial economy.’” *Vinole v. Countrywide Home Loans*, 571 F.3d 935, 944 (9th Cir. 2009)
 21 (quoting *Zinser v. Accufix Research Inst.*, 253 F.3d 1180, 1189 (9th Cir. 2001)).

22 Plaintiff contends the predominance requirement is satisfied because the class “claims involve
 23 the same allegations, fact, supporting evidence, and applicable law.” (Doc. 70 at 28.) According to
 24 Plaintiff, “the outcome of this litigation hinges on Defendant’ uniform operations and employment
 25 policies and procedures, which applied across its hourly-paid employees during the Class Period.” (*Id.*)
 26 For example, Plaintiff asserts Defendants had a “uniform policy and systematic scheme” of “failing to
 27 provide compliant meal and rest periods and associated premium pay.” (*Id.*) In addition, Plaintiff
 28 contends Defendants’ payroll and recordkeeping practices applied to the entirety of their hourly-paid

1 workforce. (*Id.*) Based upon the information provided and the allegations presented in the Second
 2 Amended Complaint, the Court finds adjudication of the claims via a class action promotes judicial
 3 economy, and the Settlement Class satisfies this requirement.

4 2. Superiority

5 The superiority inquiry requires a determination of “whether objectives of the particular class
 6 action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023 (citation omitted).
 7 This tests whether “class litigation of common issues will reduce litigation costs and promote greater
 8 efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Pursuant to Rule
 9 23(b)(3), the Court must consider four non-exclusive factors to determine whether a class is a superior
 10 method of adjudication, including (1) interests of class members, (2) other pending litigation, (3) the
 11 desirability of concentrating claims in one forum, and (4) difficulties with the management of the class
 12 action. *Id.*; see also *James v. Uber Techs. Inc.*, 338 F.R.D. 123, 143 (C.D. Cal. 2021) (indicating the
 13 factors identified in Rule 23(b)(3) address the “superiority” analysis).

14 a. *Class members’ interest in individual litigation*

15 The Court must consider “the class members’ interests in individually controlling the
 16 prosecution or defense of separate actions.” Fed. R. Civ. P. 23(b)(3)(A). This factor is most relevant
 17 when class members “suffered sizeable damages or [have] an emotional stake in the litigation.”
 18 *McKenzie v. Fed. Express Corp.*, 275 F.R.D. 290, 301 (C.D. Cal. 2011). The Ninth Circuit explained
 19 that “[w]here damages suffered by each putative class member are not large, this factor weighs in
 20 favor of certifying a class action.” *Zinser*, 253 F.3d at 1190.

21 The Settlement Administrator reports there were no objections and no requests for exclusion.
 22 (Doc. 86 at 3, Butler Supp. Decl. ¶¶ 9-10.) There is no indication Class Members desire to control this
 23 action or proceed with individual litigation. Indeed, “[t]he absence of a single objection to the Proposed
 24 Settlement provides further support for final approval of the Proposed Settlement.” *Nat'l Rural
 25 Telecomm.,* 221 F.R.D. at 529 (citations omitted); see also *Barcia v. Contain-A-Way, Inc.*, 2009 WL
 26 587844 at *4 (S.D. Cal. Mar. 6, 2009).

27 In addition, the anticipated payments to Class Members are not particularly large, with an
 28 average class payment of \$1,996.20. (See Doc. 82-4 at 5, Butler Decl. ¶ 19.) It is unlikely that

1 individuals would pursue such small claims. *See Zinser*, 253 F.3d at 1190; *see also Millan v. Cascade*
 2 *Water Servs., Inc.*, 310 F.R.D. 593, 606 (E.D. Cal. 2015) (the estimated average of about \$7,300 per
 3 class member supported a conclusion that a class action was superior to individual litigation, because it
 4 was “unlikely that such a sum would drive interest in controlling the prosecution of a separate action”);
 5 *Dakota Med., Inc. v. RehabCare Group, Inc.*, 2017 WL 1398816, *10 (E.D. Cal. Apr. 19, 2017) (“an
 6 average recovery of slightly less than \$2,000[] would be likely far too little to warrant bringing each of
 7 these similar claims as individual actions” and supported the conclusion that “a class action … is
 8 superior to any other available method for adjudicating this controversy”). As this Court previously
 9 observed, “When the individual claims of class members are small, the class action facilitates the
 10 spreading of the litigation costs among the numerous injured parties.” *Monterrubio v. Best Buy Stores,*
 11 *L.P.*, 291 F.R.D. 443, (E.D. Cal. 2013) (internal quotation marks, citation omitted). Thus, the factor
 12 weighs significantly in favor of certification for the Settlement Class.

13 *b. Other litigation*

14 Next, the Court considers “the extent and nature of any litigation concerning the controversy
 15 already begun by or against class members.” Fed. R. Civ. P. 23(b)(3)(B). The parties did not identify
 16 any other litigation encompassing the claims addressed raised by Plaintiff in this action. Therefore,
 17 this factor weighs in favor of certification and final approval.

18 *c. Concentration in one forum*

19 Third, the Court must consider “the desirability or undesirability of concentrating the litigation
 20 of the claims in the particular forum.” Fed. R. Civ. P. 23(b)(3)(C). There is no suggestion the Eastern
 21 District is an undesirable forum for the matter, which raises wage and hour claims on behalf of
 22 individuals who worked throughout the state. *See United States ex rel. Terry v. Wasatch Advantage*
 23 *Grp., LLC*, 327 F.R.D. 395, 419 (E.D. Cal. 2018) (finding the factor weighed in favor of certification
 24 where the proposed class was comprised of individuals located in California and involved
 25 “California state law claims”). Moreover, as this Court previously explained, when “parties … agreed
 26 on a proposed Settlement Agreement, the desirability of concentrating the litigation in one forum is
 27 obvious.” *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474 (E.D. Cal. 2009) (internal quotation marks,
 28 citation omitted). Consequently, this factor weighs in favor of certification.

1 d. *Management of the action*

2 Finally, the Court must consider “the likely difficulties in managing a class action.” Fed. R.
 3 Civ. P. 23(b)(3)(D). The Supreme Court explained that, in general, “manageability … encompasses the
 4 whole range of practical problems that may render the class format inappropriate for a particular suit.”
 5 *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 164 (1974). Because the parties reached an agreement for
 6 the class claims and identified the Settlement Class, it does not appear there are any problems with
 7 managing the action. *See Espinosa v. Ahearn*, 926 F.3d 539, 556-57 (9th Cir. 2019) (“manageability is
 8 not a concern in certifying a settlement class where, by definition, there will be no trial”); *see also*
 9 *Spann v. J.C. Penney Corp.*, 214 F.R.D. 312, 318 (C.D. Cal. 2016) (“settlement obviates the need for a
 10 manageable trial”). Further, the Court need not speculate as to manageability of the classes if the case
 11 were to proceed to trial. *See Amchem Prods.*, 521 U.S. at 620 (“with a request for settlement-only class
 12 certification, a district court need not inquire whether the case, if tried, would present intractable
 13 management problems”). Thus, this factor weighs in favor of certification of the Settlement Class.

14 **C. Conclusion and certification**

15 Plaintiff carries the burden to show the prerequisites of Rule 23(a) are satisfied, and the class is
 16 maintainable under Rule 23(b)(3). Accordingly, the request to certify the Settlement Class defined
 17 above is **GRANTED**.

18 **II. Evaluation of the Settlement Terms**

19 Settlement of a class action requires approval of the Court, which may be granted “only after a
 20 hearing and on finding that [the settlement] is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2).
 21 Approval is required to ensure settlement is consistent with the plaintiff’s fiduciary obligations to the
 22 class. *Ficalora v. Lockheed Cal. Co.*, 751 F.2d 995, 996 (9th Cir. 1985). The Ninth Circuit identified
 23 several factors to evaluate whether a settlement agreement meets these standards, including:

24 the strength of plaintiff’s case; the risk, expense, complexity, and likely
 25 duration of further litigation; the risk of maintaining class action status
 26 throughout the trial; the amount offered in settlement; the extent of
 27 discovery completed, and the stage of the proceedings; the experience
 28 and views of counsel; the presence of a governmental participant; and
 the reaction of the class members to the proposed settlement.

Staton, 327 F.3d at 959 (citation omitted).

The Federal Rules now also identify “specific factors to consider in determining whether a settlement is ‘fair, reasonable, and adequate.’” *Briseño v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021). In relevant part, Rule 23(e) directs the Court to consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *see also Briseño*, 998 F.3d at 1023-24. “The goal of amended Rule 23(e) is to focus the district court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.” *Aquino v. 99 Cents Only Stores LLC*, 2023 WL 8696362, at *6 (C.D. Cal. July 11, 2023) (quoting Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes) (modifications adopted). The Ninth Circuit determined the revisions to Rule 23 requires courts “to go beyond [its] precedent.” *Briseño*, 998 F.3d at 1026. Nevertheless, the Ninth Circuit also instructs courts to examine the prior factors “comprehensively.” *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021).

A. Extent of discovery completed and stage of the proceedings

Plaintiff asserts that since the parties “extensively investigated the veracity, strength, and scope of he claims.” (Doc. 82 at 19, citing St. John Decl. ¶ 9 [Doc. 70-3 at 13-14]; LippSmith Decl. ¶¶ 26-27 [Doc. 70-1 at 11].) According to Plaintiffs, the parties “undertook sufficient work to inform their analysis of the Settlement, including significant fact investigation; formal and informal written discovery; engaging a data analytics expert; and compiling, reviewing, and analyzing thousands of pages of documents and data Plaintiff and Defendants produced.” (*Id.*) Mr. St. John reports, “Class Counsel reviewed and analyzed documents and data, including, but not limited to, the employment records of Plaintiff; sampling of time and pay data; and Defendants’ employment and operations policies, practices, and procedures documents.” (Doc. 70-3 at 17, ¶ 23.) Mr. LippSmith also reports Defendants “produced hundreds of pages of documents and company data through formal and informal

1 exchanges,” including “company policies, company handbooks, employee files, payroll data for
 2 Plaintiff, and employee information for putative class members.” (Doc. 70-1 at 15, ¶ 39.)

3 Notably, “in wage-and-hour class actions, putative class counsel often gather evidence of
 4 company practices and ... how often class members were denied breaks or forced to take late breaks.”
 5 *Grady v. RCM Techs, Inc.*, 671 F. Supp. 3d 1065, 1074 (C.D. Cal. 2023) (internal quotation marks,
 6 citation omitted). Mr. St. John reports, “Based on investigation and information discovered, Class
 7 Counsel believe there is sufficient evidence to support allegations that Defendants violated the Labor
 8 Code.” (Doc. 70-3 at 17 ¶ 26.) Mr. LippSmith reports the review of the produced class sample data
 9 showed “the percentage of qualifying shifts when employees suffered a missed, late, or short meal
 10 period was 38.47%.” (Doc. 70-1 at 13, ¶ 33.)

11 Given the parties’ discovery related to the class claims, which undoubtedly assisted with
 12 mediation and settlement discussions, the extent of discovery completed, and the stage of the
 13 proceedings support final approval of the Settlement. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at
 14 469 (finding these two factors favored approval of a class settlement when class counsel reported they
 15 “conducted significant investigation, discovery, and research); *see also Low v. Trump Univ., LLC*, 246
 16 F. Supp. 3d 1295, 1302 (S.D. Cal. Mar. 31, 2017) (explaining these factors favor settlement when “the
 17 parties have conducted extensive discovery and thoroughly litigated the issues”).

18 **B. Strength of the case**

19 When evaluating the strength of a case, the Court should “evaluate objectively the strengths and
 20 weaknesses inherent in the litigation and the impact of those considerations on the parties’ decisions to
 21 reach these agreements.” *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012)
 22 (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1388 (D. Az. 1989)).
 23 Nevertheless, “the court need not reach any conclusions regarding the contested issues of fact and law
 24 that underlie the merits of the litigation.” *Carlin v. DairyAmerica, Inc.*, 328 F.R.D. 393 (E.D. Cal.
 25 2018) (internal quotation marks, citation omitted). A plaintiff can negotiate a fair settlement when
 26 “armed with sufficient information about the case to have been able to reasonably assess its strengths
 27 and value.” *Grady*, 671 F. Supp. 3d at 1073 (citation omitted).

28 Plaintiff asserts the parties “evaluat[ed] the substance of their claims and defenses and attendant

1 uncertainty.” (Doc. 82 at 15.) Plaintiff observes that to prevail on his claims, he “must prove that
 2 Labor Code violations demonstrate that Aggrieved Employees suffered losses and Defendants’ conduct
 3 gives rise to penalties.” (*Id.*) He contends, “Even if Plaintiff established violations, Defendants likely
 4 would characterize those violations as ‘initial,’ thus, making heightened ““subsequent violation”
 5 penalties unwarranted.” (*Id.*, citation omitted.) Further, Plaintiff previously asserted that “the Class’s
 6 expected recovery, weighed against the value of the settlement offer and considering the strength of
 7 Plaintiff’s case, supports approval of the Settlement.” (Doc. 70 at 20.)

8 Approval of a class settlement is appropriate when “it appears that each side maintains a clear
 9 idea of the strengths and weaknesses of their respective cases.” *See Khaled v. Library Sys. & Servs.*,
 10 2021 WL 2366952, at *5 (C.D. Cal. May 14, 2021). In the Settlement, the parties indicate they
 11 “discussed Plaintiff’s claims, theories for class certification, and Defendants’ defenses thereto.” (Doc.
 12 70-2 at 13, Settlement ¶ 2.10.) In addition, the parties “analyzed the potential exposure of Defendants
 13 on Plaintiff’s claims, Defendants’ potential liability for penalties and interest, as well as the potential
 14 risks of any potential judgment against Defendants.” (*Id.*) Given the extent of the discovery completed
 15—including the review of sample data to determine meal and rest break violation rates—it appears the
 16 parties made informed decisions to evaluate the strength of the class claims. *See Grady*, 671 F. Supp.
 17 3d at 1073. Because it appears the parties had sufficient information to evaluate the strengths of the
 18 claims, as well as potential PAGA penalties, this factor weighs in favor of final approval.

19 C. Representation of the Class

20 To determine adequacy of representation under Rule 23(e)(2), the Court may consider whether
 21 the interests of the named plaintiff are “aligned with the interests of the Class Members.” *See Cottle v.*
22 Plaid Inc., 240 F.R.D. 356, 376 (N.D. Cal. 2021). In addition, a finding that “Class Counsel are
 23 experienced and competent” supports a conclusion that the class is adequately represented. *Id.*; *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) (“Parties represented by competent
 24 counsel are better positioned than courts to produce a settlement that fairly reflects each party’s
 25 expected outcome in litigation.”). Thus, the adequacy analysis under Rule 23(e)(2) “is redundant of
 26 the requirements of Rule 23(a)(4).” *Almanzar v. Home Depot U.S.A., Inc.*, 2022 WL 2817435, at *9
 27 (E.D. Cal. July 18, 2022) (citation omitted).

1 Plaintiff's interests appear aligned with those of class members, as they share a common
 2 interest in challenging the alleged wrongful wage and hour policies. In addition, Class Counsel are
 3 clearly experienced in wage-and-hour class action litigation. (See Doc. 70-1 at 2-9, LippSmith Decl.
 4 ¶¶ 4-16; Doc. 70-3 at 2-6, St. John Decl. ¶¶ 2-12.) As discussed above, Plaintiff carried the burden to
 5 show the adequacy prerequisite was satisfied under Rule 23(a). Thus, the Court finds the requirement
 6 under Rule 23(e)(2) is also satisfied for purposes of final approval. *See Flores v. Dart Container*
 7 *Corp.*, 2021 WL 1985440, at *5 (E.D. Cal. May 17, 2021) (“Because the Court has found that the
 8 proposed class satisfies Rule 23(a)(4) for purposes of class certification, the adequacy factor under
 9 Rule 23(e)(2)(A) is also met”).

10 **D. Negotiation of the Settlement**

11 Under Rule 23, the Court must consider whether “the proposal was negotiated at arm’s length.”
 12 Fed. R. Civ. P. 23(e)(2)(B). The Ninth Circuit also “put[s] a good deal of stock in the product of an
 13 arms-length, non-collusive, negotiated resolution” in evaluating a proposed class action settlement.
 14 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009). The inquiry of collusion addresses
 15 the possibility that the settlement agreement is the result of either “overt misconduct by the negotiators”
 16 or improper incentives of class members at the expense of others. *Staton*, 327 F.3d at 960. The Ninth
 17 Circuit observed that “settlement class actions present unique due process concerns for absent class
 18 members” because the “inherent risk is that class counsel may collude with the defendants, tacitly
 19 reducing the overall settlement in return for a higher attorney’s fee.” *In re Bluetooth Headset Prods.*
 20 *Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quotation marks, citations omitted). Thus, the Court
 21 must consider whether the process by which the parties arrived at their settlement is truly the product of
 22 arm’s length bargaining—as Plaintiff asserts (Doc. 82 at 22)—or if the agreement is the product of
 23 collusion or fraud. *Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 613 (E.D. Cal. 2015).

24 When a settlement agreement is reached prior to a class being certified, district courts must be
 25 watchful “not only for explicit collusion, but also for more subtle signs that class counsel have allowed
 26 pursuit of their own self-interests and that of certain class members to infect the negotiations.” *In re*
 27 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 94; *see also Briseño*, 998 F.3d at 1023. These
 28 “more subtle signs” include: (1) “when counsel receive a disproportionate distribution of the

1 settlement, or when the class receives no monetary distribution but class counsel are amply rewarded”;
 2 (2) the existence of a “clear sailing” arrangement, which provides “for the payment of attorneys’ fees
 3 separate and apart from class funds” and “carries the potential of enabling a defendant to pay class
 4 counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of
 5 the class”; and (3) “when the parties arrange for fees not awarded to revert to defendants rather than be
 6 added to the class fund.” *Id.* (internal quotations, citations omitted).

7 1. Whether there is a disproportionate distribution to counsel

8 The Settlement provides that Class counsel may request attorneys’ fees “up to \$665,000.00”—
 9 which is 35% the settlement fund. (Doc. 70-2 at 7, Settlement ¶ 1.18; *see also id.* at 24, ¶ 4.7.) The
 10 typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total
 11 settlement value, with 25% considered the benchmark. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th
 12 Cir. 2000). Thus, the contemplated fees exceed the range typically awarded within the Ninth Circuit
 13 and may be deemed a disproportionate distribution if an upward departure from the benchmark is not
 14 warranted. *See Miranda v. Am. Nat’l Red Cross*, 2025 WL 1871128, at *3 (N.D. Cal. June 10, 2025)
 15 (directing counsel to show support—including a lodestar calculation—because such a percentage
 16 could be a disproportionate distribution). Nevertheless, given the flexibility of an award *up to*
 17 \$665,000.00, the Court finds the proposed fee award does not mandate a finding of collusion. *See*
 18 *Koepeen v. Carvana, LLC*, 2024 WL 3925703, at *9 (N.D. Cal. Aug. 22, 2024) (finding a fee award of
 19 35% of a settlement fund “is a red flag, [but] does not raise a concern regarding collusion”).

20 2. Existence of a “clear sailing” agreement

21 In general, a “clear sailing” provision is one in which the parties agree to the “payment of
 22 attorneys’ fees separate and apart from class funds.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654
 23 F.3d at 947. The Ninth Circuit recognized also a “clear sailing” arrangement exists when a defendant
 24 expressly agrees not to oppose an award of attorneys’ fees up to an agreed upon amount. *Lane v.*
 25 *Facebook, Inc.*, 696 F.3d 811, 832 (9th Cir. 2012); *In re Toys R Us-Delaware, Inc.-Fair and Accurate*
 26 *Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 458 (C.D. Cal. 2014) (“a clear sailing
 27 agreement is one where the party paying the fee agrees not to contest the amount to be awarded by the
 28 fee-setting court so long as the award falls beneath a negotiated ceiling”). For example, where the

1 defendant agreed that “that it would not oppose any application for attorneys’ fees not exceeding 25%
 2 of the settlement value,” the Ninth Circuit determined such was ““a clear sailing attorney’s fees
 3 provision.” *Farrell v. Bank of Am. Corp., N.A.*, 827 Fed. Appx. 628, 632 (9th Cir. 2020) (internal
 4 quotation marks omitted).

5 Pursuant to the Settlement, “Defendants agree not to oppose” the request for fees in “an
 6 amount not to exceed \$665,000.00.” (Doc. 70-2 at 24, ¶ 4.7.) Thus, the Settlement includes a version
 7 of a “clear sailing” agreement. Nevertheless, the existence of the clear sailing provision is not
 8 necessarily fatal to approval. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 948.
 9 Rather, “when confronted with a clear sailing provision, the district court has a heightened duty to peer
 10 into the provision and scrutinize closely the relationship between attorneys’ fees and benefit to the
 11 class.” *Id.* (citing *Staton*, 327 F.3d at 954).

12 As discussed below, the Court finds an award from the common fund is appropriate, and the
 13 modified award is reasonable in light of the time expended and results obtained. This factor does not
 14 mandate a finding of collusion, and the factor does not weigh against final approval of the settlement.
 15 *See Swain v. Anders Group, LLC*, 2023 WL 2976368, at *10 (E.D. Cal. Apr. 17, 2023) (finding a clear
 16 sailing provision did not weigh against final approval where the fees were “reasonable based on
 17 evidence submitted by class counsel”); *see also Singh v. Roadrunner Intermodal Servs. LLC*, 2019 WL
 18 316814 at *7-8 (E.D. Cal. Jan 24, 2019) (not finding collusion between the parties, despite a clear
 19 sailing agreement, where the Court analyzed the fee request and found it was reasonable).

20 3. Whether there is a reversion to Defendants

21 Finally, the reversion of unclaimed funds or fees to a defendant is a “a telltale sign of
 22 collusion.” *Jabbari v. Farmer*, 813 Fed. Appx. 259, 261 (9th Cir. 2020) (citation omitted). In the
 23 pending Settlement, the parties did not include a provision for any unawarded fees to revert to
 24 Defendants. (See Doc. 70-2 at 25, ¶ 4.11.2 [indicating money paid into the settlement fund is “non-
 25 reversionary” and “under no circumstance will there be any reversion to Defendants of any of the
 26 funds”].) Instead, the fees will be deducted from the settlement fund, and unawarded fees will be
 27 retained in the “Net Settlement Amount” that includes “the remaining portion of the Maximum
 28 Settlement Amount after deduction of the Fee and Costs Award, the Settlement Administration Costs,

1 the payment to the LWDA in the amount of \$75,000 (representing 75% of the PAGA Penalty
 2 Payment), and the Service Payment.” (Doc. 70-2 at 7, ¶ 1.19.) Because unawarded fees will be
 3 retained in the Net Settlement Amount for distribution to participating class members, this factor does
 4 not support a finding of collusion between the parties. *See, e.g., Wise v. Ulta Salon, Cosmetics &*
 5 *Fragrance, Inc.*, 2020 WL 1492672, at *6 (E.D. Cal. Mar. 26, 2020) (where there was no reversionary
 6 cause, the court was “satisfied that the settlement is not the product of collusion”)

7 4. Findings on collusion

8 Based upon the factors set forth by the Ninth Circuit, the Court finds the Settlement “appears to
 9 be the product of serious, informed, non-collusive negotiations.” *See Rodriguez v. Danell Custom*
 10 *Harvesting, LLC*, 327 F.R.D 375, 383 (E.D. Cal. 2018) (citation omitted). Thus, this factor supports
 11 final approval of the class settlement.

12 E. **Amount offered and relief provided to the Class**

13 The Ninth Circuit observed “the very essence of a settlement is compromise, ‘a yielding of
 14 absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Commission*, 688
 15 F.2d 615, 624 (9th Cir. 1982) (citation omitted). When analyzing an agreement, the Court should
 16 examine “the complete package taken as a whole,” and the proposed settlement is “not to be judged
 17 against a hypothetical or speculative measure of what *might* have been achieved by the negotiators.”
 18 *Officers for Justice*, 688 F.2d at 625, 628.

19 Plaintiff contends the amount offered in settlement supports final approval. (Doc. 82 at 18.)
 20 Mr. LippSmith reports that upon review of the class sample data produced by Defendants, Class
 21 Counsel determined a class average hourly pay of \$21.23 and “[t]he percentage of qualifying shifts
 22 when employees suffered a missed, late, or short meal period was 38.47%.” (Doc. 70-1 at 13, ¶¶ 33-
 23 34.) Using this information, counsel determined “the maximum meal and rest break award would be
 24 \$3,518,511.59.” (*Id.*, ¶ 34.) According to Mr. LippSmith, Defendants’ meal and rest break violations
 25 drove the settlement discussions,” because these violations were “more discernable from Defendants’
 26 payroll data than, for example, violations for failures to pay overtime and waiting time, to reimburse
 27 business expenses, and for wage statement errors.” (*Id.*, ¶ 31.) Assuming that each member of the
 28 Settlement Class had one unpaid overtime hour per week, counsel calculated that the potential unpaid

overtime damages total \$2,743,828.89. (*Id.* at 12-13, ¶ 30.) Mr. LippSmith also reports counsel calculated that “the maximum PAGA penalties are \$14,389,800 … for meal violations and \$14,389,800 for rest break violations.” (*Id.* at 14, ¶ 35.) Because the LDWA would receive 75% of these PAGA penalties, the maximum PAGA penalties for aggrieved employees is \$7,194,900. *See Lusk v. Five Guys Enters. LLC*, 2022 WL 4791923, at *8 (E.D. Cal. Sept. 30, 2022) (deducting the LWDA’s portion of an estimated PAGA penalty before calculating the percentage rate of recovery). Based upon this information, it appears the identified maximum potential recovery for class members and aggrieved employees—for the meal, rest break, overtime, and PAGA penalties—totals \$13,457,240.48. Thus, the gross fund designated is approximately 14% of the total calculated by Plaintiff’s counsel; and the anticipated net amount of \$1,124,908.14⁷ for Class Members and Aggrieved Employees is 8.4% of the calculated maximum potential recovery.

Notably, the Ninth Circuit observed: “It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459. The recovery in this action is consistent with other approved class action settlements in this Circuit. *See, e.g., Gonzalez v. NCI Grp., Inc.*, 2020 WL 4547303, at *11 (E.D. Cal. Aug. 6, 2020) (approving a settlement representing 9% of maximum value of the class’ claims for violations of labor law, while acknowledging the percentage was “modest”); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (finding the gross settlement of approximately 15% of the potential recovery was fair); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *10 (C.D. Cal. Feb. 16, 2017) (finding a 14% recovery of the plaintiff’s calculated maximum recovery was reasonable); *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval to settlement of labor claims representing 8.6% of maximum potential recovery).

The Settlement Administrator determined that the average recovery for the 551 class members is \$ 1,996.20; and the average PAGA payments for the 453 aggrieved employees is \$55.19. (Doc. 82-4 at 5-6, Butler Decl. ¶¶ 19-21.) Analyzing the factors identified in Rule 23, as discussed below, the

⁷ This includes the total Net Settlement Fund of \$1,099,908.14 for the class estimated by the Settlement Administrator, plus the \$25,000 in PAGA awards for the aggrieved employees. (See Doc. 82-4 at 5, ¶ 18.)

1 Court finds the amount offered and relief provided to the Settlement Class supports final approval of
 2 the Settlement.

3 1. Costs, risks, and delays

4 “A central concern when evaluating a proposed class action settlement relates to the cost and
 5 risk involved in pursuing a litigated outcome.” *Feltzs v. Cox Comm’s Cal., LLC*, 2022 WL 2079144 at
 6 *9 (C.D. Cal. Mar. 2, 2022) (quoting Fed. R. Civ. P. 23(e), 2018 Advisory Committee Notes
 7 [modifications adopted].) Settlement is “preferable to lengthy and expensive litigation with uncertain
 8 results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004).

9 Plaintiff contends “the Settlement provides adequate relief to the Class, considering costs, risks,
 10 and delay of trial and appeal.” (Doc. 82 at 21; *see also id.* at 17-18.) He observes that “to prevail,
 11 Plaintiff would have to obtain class certification, survive summary judgment, win trial, and overcome
 12 an appeal.” (*Id.* at 21-22.) Importantly, the claims in this action remain disputed. As indicated in the
 13 Settlement, “Defendants deny all claims as to liability, damages, penalties, interest, fees, restitution,
 14 injunctive relief, and all other forms of relief, as well as the class and PAGA allegations asserted in the
 15 Action.” (Doc. 70-2 at 11, ¶ 2.2.) Plaintiff acknowledges that if Defendants defeated class certification
 16 or undermined the data extrapolation, “it would negate or significantly reduce any recovery.” (Doc. 70
 17 at 21.) For example, Plaintiff notes that if the Court determined Defendants were “not subject to \$200
 18 PAGA penalties without prior notice by the Labor Commissioner or any court,” the potential maximum
 19 penalties for the meal and rest break claims would be reduced from \$28,797,600 to \$9,599,200. (*See*
 20 *id.* at 21-22.) In addition, Plaintiff notes that it would “be challenging to prove” labor law “violations
 21 impacting every employee[,] every week.” (*Id.* at 22; *see also Doc. 82 at 22.*) On the other hand,
 22 Plaintiff observes that the Settlement provides “certain and prompt relief” to the class for the alleged
 23 violations. (Doc. 82 at 22, citation omitted.)

24 Notably, wage and hour class actions are naturally “time-consuming and expensive to litigate.”
 25 *Aguilar v. Wawona Frozen Foods*, 2017 WL 2214936, at *3 (E.D. Cal. May 19, 2017) (citation
 26 omitted). If the Settlement is rejected, the parties would have to engage in further litigation, including
 27 seeking—and challenging—class certification and additional discovery on the issue of damages. The
 28 time and expense of continued litigation could outweigh any additional recovery. As Plaintiff

1 contends, the proposed settlement provides for immediate recovery for the class. Due to the disputed
 2 liability, risk to the claims of class members, costs of future litigation that may reduce the recovery to
 3 class members, and delay in payments if the settlement is not approved, this factor weighs in favor of
 4 final approval of the Settlement. *See Rodriguez*, 563 F.3d at 966 (finding that the risk, expense,
 5 complexity and duration of litigation support settlement); *In re LinkedIn User Privacy Litig.*, 309
 6 F.R.D. 573, 587 (N.D. Cal. 2015) (“Settlement avoids the complexity, delay, risk and expense of
 7 continuing with the litigation and will produce a prompt, certain, and substantial recovery for the
 8 Plaintiff class” [citation omitted]).

9 2. Method of distribution

10 “[T]he goal of any distribution method is to get as much of the available damages remedy to
 11 class members as possible and in as simple and expedient a manner as possible.” *Hilsley v. Ocean*
 12 *Spray Cranberries, Inc.*, 2020 WL 520616 at *7 (S.D. Cal. Jan. 31, 2020) (citing “Final approval
 13 criteria—Rule 23(e)(2)(C)(ii): Distribution method,” 4 NEWBERG ON CLASS ACTIONS § 13:53 (5th ed.)).
 14 “Often it will be important for the court to scrutinize the method of claims processing to ensure that it
 15 facilitates filing legitimate claims.” Fed. R. Civ. P. 23(e), 2018 Advisory Committee Notes. “A claims
 16 processing method should deter or defeat unjustified claims, but the court should be alert to whether the
 17 claims process is unduly demanding.” *Id.*

18 a. Distribution to class members

19 Settlement Class members are not required to take any action, such as submitting a claim form,
 20 to receive their settlement payment. (Doc. 70-2 at 16, ¶ 4.2.1.) The Settlement Administrator will
 21 “distribute checks via first-class mail to Settlement Class Members and aggrieved employees for their
 22 respective Individual Payment Amounts no later than ten (10) calendar days after the Settlement
 23 Administrator receives the Settlement Proceeds from Defendants or as otherwise ordered by the
 24 Court.” (*Id.* at 25, ¶ 4.11.3.) The individuals will have 90 days to deposit their checks, after which
 25 “undeposited checks... will be cancelled and voided.” (*Id.*, ¶ 4.11.4.) The Settlement Administrator
 26 will then “redistribute the remaining uncashed Settlement Proceeds to Class Members and aggrieved
 27 employees who cashed their payments from the initial distribution of Settlement Proceeds,” using the
 28 same *pro rata* formulas as the first distribution. (*Id.*)

Under the terms of the Settlement, the class members were only required to take action if they wished to opt-out of the settlement, object to any of the terms, or dispute the amount of their individual settlement share. Because the class members are not required to submit and claim form, the proposed method of distribution facilitates payment for legitimate claims without being “unduly demanding” upon the Settlement Class. Thus, this factor weighs in favor of final approval. *See Jackson v. Fastenal Co.*, 2021 WL 5755583 at *11 (E.D. Cal. Dec. 3, 2021) (finding “the proposed method of distributing relief is effective, and weighs in favor of a finding that the settlement agreement is fair, reasonable and adequate” where a claim form was not required).

b. Distribution to a cy pres beneficiary

Since many class action settlements result in unclaimed funds, the parties should have a plan for distribution of the unclaimed funds. *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990). Options for such distribution include cy pres distribution, escheat to the government, and reversion to the defendants. *Id.*, 904 F.2d at 1307. Here, the parties agree that after the second distribution to participating class members, undeposited checks will be cancelled and voided after 90 days, and the funds shall “be delivered to Legal Aid at Work by the Settlement Administrator, or shall otherwise be distributed as ordered by the Court.” (Doc. 70-2 at 25, ¶ 4.11.4.) Thus, the parties indicate that Legal Aid at Work shall be a cy pres beneficiary in this matter for unclaimed funds from the second distribution of checks.⁸

The Ninth Circuit determined a proposed cy pres recipient should be “tethered to the nature of the lawsuit and the interest of the silent class members.” *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011). In other words, the Ninth Circuit “require[s] that there be a driving nexus between the plaintiff class and the cy pres beneficiaries.” *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012) (citing *Nachshin*, 663 F.3d at 1038). The Court explained that without such tethering, the distribution of funds “may create the appearance of impropriety” by catering “to the whims and self interests of the

⁸ The Settlement also originally provided that the cy pres beneficiary would receive “any amounts that would have been paid to Class Members who timely request exclusion.” (Doc. 70-2 at 25, ¶ 4.11.4.) The Court struck this portion of ¶ 4.11.4 from the Settlement at the preliminary approval stage. (Doc. 73 at 36.) Rather, the Court indicated that “pursuant to Paragraph 4.2.4, the payments calculated for those who request exclusion **SHALL** be retained in the Net Settlement Fund, and the payments to participating class members shall be proportionally increased.” (*Id.*)

1 parties, their counsel, or the court.” *Nachshin*, 663 F.3d at 1038. Thus, a cy pres award should not
 2 benefit a group that is “too remote from the plaintiff class.” *Six Mexican Workers*, 904 F.2d at 1308.
 3 The Ninth Circuit directs courts to consider whether awards to the beneficiary “(1) address the
 4 objectives of the underlying statutes, (2) target the plaintiff class, or (3) provide reasonable certainty
 5 that any member will be benefitted.” *See Nachshin*, 663 F.3d at 1039-1040 (citing *Six Mexican*
 6 *Workers*, 904 F.2d at 1307). Further, the Court must consider whether the cy pres distribution is
 7 appropriate given the “size and geographic diversity” of the class members. *Id.* at 1040-1041 (citing,
 8 e.g., *In re Airline Ticket Comm’n Antitrust Litig.*, 307 F.3d 679, 683 (8th Cir. 2002); *Houck on Behalf*
 9 *of U.S. v. Folding Carton Admin. Comm.*, 881 F.2d 494, 502 (7th Cir. 1989)).

10 At the preliminary approval stage, the Court observed that “Plaintiff did not provide any
 11 analysis of these factors to assist the Court in evaluating whether Legal Aid at Work is an appropriate
 12 cy pres beneficiary.” (Doc. 73 at 36-37.) The Court ordered:

13 In support of the request to appoint Legal Aid at Work—or any other cy
 14 pres beneficiary—Plaintiff **SHALL** clearly address the factors identified
 15 by the Ninth Circuit in *Nachshin* in seeking final approval of the
 16 Settlement. Moreover, the Ninth Circuit indicated that a district court
 17 should also examine any “between the cy pres recipient and the parties or
 18 their counsel.” *In re Google Referrer Header Priv. Litig.*, 869 F.3d 737,
 19 744 (9th Cir. 2017), vacated on other grounds, *sub nom, Frank v. Gaos*,
 20 139 S. Ct. 1041, 203 L. Ed. 2d 404 (2019). Toward that end, it [is]
 21 important for the Court to consider factors such as “the nature of the
 22 relationship, the timing and recency of the relationship, the significance of
 23 dealings between the recipient and the party or counsel, the circumstances
 24 of the selection process, and the merits of the recipient.” *Id.*; see also *City*
of Long Beach v. Monsanto Co., 2020 WL 10540857, at *2 (C.D. Cal.
 July 13, 2020) (“The parties shall also identify any relationship they or
 25 their counsel have with the proposed cy pres recipient.”) Thus, Plaintiff
 shall also address whether there is any past or current relationship between
 26 Class Counsel and Legal Aid at Work.

27 (Doc. 73 at 36, n. 5.) Despite this instruction, Plaintiff does not address the propriety of appointing
 28 Legal Aid at Work as the cy pres beneficiary in the pending motion. (*See generally* Doc. 82.) For this
 reason, the Court **DECLINES** to appoint Legal Aid at Work as the cy pres beneficiary.

29 Nevertheless, the Ninth Circuit observed that issues related to the identity of a cy pres
 30 beneficiary are not generally ripe until funds remain unclaimed. *See Rodriguez v. West Publ’g Corp.*,
 31 563 F.3d 948, 966 (9th Cir. 2009) (finding cy pres distribution “becomes ripe only if entire settlement
 32 fund is not distributed to class members” and declining to determine propriety of cy pres distribution at

that time). The Court explained that where a cy pres distribution is contingent on the outcome of the claims process for a cash distribution, issues regarding the identification of recipients “will not be ripe until it is determined that available cash remains in th[e] fund after the claims process has concluded.” *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012). At this point in the proceedings, it is impossible to predict whether funds will from the second distribution to class members. The Court will retain jurisdiction over the Settlement, and the parties may seek approval of an appropriate cy pres beneficiary if the issue becomes ripe. *See Hartless v. Clorox Co.*, 273 F.R.D. 630, 642 (S.D. Cal. 2011) (finding the cy pres recipient need not be identified prior to granting final approval); *see also Stark v. Patreon, Inc.*, 2025 WL 1592736, at *4 (N.D. Cal. June 5, 2025) (observing that where the parties agreed a second *pro rata* distribution would occur to participating class members for uncashed funds before any payment to a cy pres beneficiary, the issue of identifying the cy pres recipient was “not ripe” at the final approval stage). Accordingly, the failure to show Legal Aid at Work is an appropriate cy pres beneficiary does not weigh against final approval.

3. Attorneys’ fees

Under Rule 23, “courts must scrutinize ‘the terms of any proposed award of attorney’s fees.’” *McKinney-Drobnis v. Oreshack*, 16 F.14th 594, 607 (9th Cir. 2021) (quoting Fed. R. Civ. P. 23(e)(2)(C)(iii)). The Ninth Circuit explained it “interpreted the amended Rule 23(e)(2) as imposing an obligation on district courts to ‘examine whether the attorneys’ fees arrangement shortchanges the class.’” *Id.*, quoting *Briseño*, 998 F.3d at 1024. “In other words, the new Rule 23(e) makes clear that courts must balance the proposed award of attorney’s fees vis-à-vis the relief provided for the class in determining whether the settlement is adequate for class members.” *Id.* (internal quotation marks, citation omitted).

Plaintiff contends this factor supports final approval, because “[t]he Settlement contains reasonable attorney fee terms.” (Doc. 82 at 22.) The Court finds the modified fees to be awarded are fair, adequate, and reasonable. The Court-approved payment shall be made by the Settlement Administrator within 10 days of Defendants providing the funds to the Settlement Administrator. (Doc. 70-2 at 24, ¶ 4.11.1) In that same 10-day period, the Settlement Administrator will issue the other approved payments, including to Class Members. (*Id.*) Thus, counsel will receive payment in

1 the same period of time as Class Members, and the timing of payment does not weigh against final
 2 approval of the Class Settlement. *See Perks v. ActiveHours, Inc.*, 2021 WL 1146038, at *6 (N.D. Cal.
 3 Mar. 25, 2021) (finding the timing did not weigh against approval where both class counsel and class
 4 members were to receive payments after final approval).

5 4. Agreement required to be identified

6 The Court must consider any agreement that is required to be identified under Rule 23(e)(3).
 7 Fed. R. Civ. P. 23(e)(2)(C)(iv). Specifically, “parties seeking approval must file a statement identifying
 8 any agreement made in connection with the proposal.” Fed. R. Civ. P. 23(e)(3). The parties did not
 9 identify any such agreement at the preliminary approval stage. However, following preliminary
 10 approval, the parties entered into a subsequent agreement for Defendants to pay additional funds, to
 11 cover the claims of the Omitted Class Members, using the formula identified in the Settlement to
 12 calculate payments. (Doc. 76.) This agreement ensures that all class members are treated equitably.
 13 Accordingly, this factor does not weigh against final approval.

14 F. **Treatment of Class Members**

15 Rule 23 requires the Court to consider whether the proposed settlement “treats class members
 16 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “A distribution of relief that favors
 17 some class members at the expense of others may be a red flag that class counsel have sold out some
 18 of the class members at the expense of others, or for their own benefit.” *Hilsley*, 2020 WL 520616 at
 19 *7 (citation omitted).

20 The parties agreed that class members who did not timely opt-out of the Settlement will receive
 21 a *pro rata* share of the Net Settlement Amount, calculated by:

22 (i) dividing the Settlement Class Member’s total number of workweeks
 23 worked for Defendants in California during the Class Period by the total
 24 number of workweeks worked by all Settlement Class Members for
 25 Defendants during the Class Period, and (ii) multiplying that pro rata share
 26 by the allocated amount of the Net Settlement Amount. Any workweeks
 27 during the Class Period in which a Settlement Class Member did not
 28 actually work (for example, while on a leave of absence, etc.) are not
 included in calculating that Settlement Class Member’s Individual
 Payment Amount.

(Doc. 70-2 at 16, ¶ 4.2.2.) Because the Settlement provides *pro rata* distribution based upon the
 number of workweeks, the agreement treats the class members equitably, and the proposed distribution

1 plan supports final approval. *See Cooks v. TNG GP*, 2021 WL 5139613 at *4 (E.D. Cal. Nov. 4, 2021)
 2 (observing the calculation of payments to class members “on a pro-rata basis based on the number of
 3 compensable workweeks each member worked … is fair and treats class members equitably”); *see also*
 4 *Morgan v. Rohr*, 2025 WL 1285830 at *14 (S.D. Cal. May 1, 2025) (finding a *pro rata* distribution had
 5 “little to no risk of unequal treatment” and weighed in favor of approving the settlement terms);
 6 *Gomez-Gasca v. Future AG Mgmt. Inc.*, 2020 WL 6149688 at *4 (N.D. Cal. Oct. 20, 2020) (noting that
 7 in the preliminary approval stage, “the Court approved the proposed plan pro rata allocation based on
 8 the number of workweeks the class member performed work during the Class Period”).

9 **G. Views of counsel**

10 As addressed above, Class Counsel are experienced in class action litigation. Mr. LippSmith
 11 indicates a belief that “the Settlement is beyond fair and adequate.” (Doc. 82-1 at 9, ¶ 26.) He states,
 12 “this Settlement represents a tremendous result for the Class Members, Aggrieved Employees, and
 13 LWDA after Class Counsel’s serious efforts on a contingency basis.” (*Id.*) Mr. LippSmith indicates
 14 that the “continue[s] to support approval of the Settlement without any hesitation whatsoever.” (*Id.*).
 15 Similarly, Mr. St. John believes that “[t]he settlement is fair, reasonable, and adequate; fulfills the
 16 purpose of the PAGA statute; and is in the best interests of the Class, the State of California, and
 17 PAGA aggrieved employees.” (Doc. 70-3 at 22, ¶ 32.) The Settlement also indicates that Defendants
 18 “believe this Settlement is a fair, adequate, and reasonable Settlement of this Action...” (Doc. 70-2 at
 19 14, ¶ 2.14.) These opinions of Class Counsel and Defendants’ counsel are entitled to significant
 20 weight and support approval of the Settlement. *See Nat'l Rural Telecomm.,* 221 F.R.D. at 528
 21 (“Great weight is accorded to the recommendation of counsel, who are most closely acquainted with
 22 the facts of the underlying litigation”); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447
 23 (E.D. Cal. 2013) (“the trial court is entitled to, and should, rely upon the judgment of experienced
 24 counsel for the parties”).

25 **H. Reaction of Class Members to the Settlement**

26 “[T]he absence of a large number of objections to a proposed class action settlement raises a
 27 strong presumption that the terms of a proposed class action settlement are favorable to the class
 28 members.” *Nat'l Rural Telecomm.*, 221 F.R.D. at 529; *see also Cottle*, 340 F.R.D. at 376 (observing

1 the court may assess the reaction of class members by considering “how many class members
 2 submitted … objections” at the final approval stage).

3 Plaintiff agreed to the terms of Settlement Agreement. (See Doc. 70-2 at 29.) After receiving
 4 the Court-approved Notice, Class Members reacted very favorably to the proposed settlement terms,
 5 because there were no objections or requests for exclusion. (Doc. 86 at 3, Butler Supp. Decl. ¶¶ 9-10.)
 6 This “absence of a negative reaction[] strongly supports settlement.” *Chun-Hoon v. McKee Foods*
 7 *Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010); *see also Manzo v. McDonalds Rests. of Cal., Inc.*,
 8 2022 WL 4586236, at *8 (E.D. Cal. Sept. 29, 2022) (“[t]he lack of any objection weighs in favor of
 9 final approval of the settlement”); *Taylor v. Populous Group, LLC*, 2023 WL 139724, at *3 (S.D. Cal.
 10 Jan 9, 2023) (the class members’ reaction—after notice of the settlement terms and “an opportunity to
 11 express their reactions”—supported final approval where no objections to the Settlement were filed).
 12 Accordingly, this factor weighs in favor of final approval.

13 **I. Presence of a government participant**

14 Finally, the Ninth Circuit instructs the Court to consider “the presence of a governmental
 15 participant.” *Staton*, 327 F.3d at 959. However, no government entities participated in this case, and
 16 no government entities are parties to the Settlement. There is only a government beneficiary with the
 17 payment to the LWDA. Consequently, this factor does not weigh in the Court’s analysis.

18 **III. Conclusion**

19 The factors identified under Rule 23 and by the Ninth Circuit weigh in favor of final approval
 20 of the Settlement, and the terms of the Settlement are fair, reasonable, and adequate. Therefore, the
 21 request for final approval of the Class Settlement is **GRANTED**.

22 **APPROVAL OF PAGA SETTLEMENT**

23 California adopted its Private Attorney General Act to allow individual plaintiffs “to bring a
 24 civil action to collect civil penalties for Labor Code violations previously only available in enforcement
 25 actions initiated by the State’s labor law enforcement agencies.” *Caliber Bodyworks, Inc. v. Superior*
 26 *Court*, 134 Cal. App. 4th 365, 374 (2005); *see also* Cal. Lab. Code § 2699(a); *Urbino v. Orkin Servs. of*
 27 *Cal.*, 726 F.3d 1118, 1121 (9th Cir. 2013). Thus, a PAGA plaintiff now acts “as the proxy or agent of
 28 the state’s labor law enforcement agencies.” *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009).

Pursuant to PAGA, an “aggrieved employee” may bring an action for civil penalties for labor code violations on behalf of himself and other current or former employees. Cal. Lab. Code § 2699(a). PAGA defines an “aggrieved employee” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” *Id.* A judgment in a PAGA action “binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government.” *Arias*, 46 Cal. 4th at 986.

To bring an action under PAGA, an aggrieved employee must first provide written notice to the employer and the Labor and Work Force Development Agency. Cal. Lab. Code § 2699.3(a)(1). Recovery under PAGA is limited to civil penalties, and the civil penalties must be allocated with 75% directed to the LWDA and 25% to aggrieved employees. *Id.* § 2699(i). Any proposed settlement of PAGA claims must be submitted to the LWDA, and a trial court must “review and approve” any settlement of PAGA claims. *Id.* § 2699(l)(2); *see also Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 971 (N.D. Cal. 2019) (because settling a PAGA claim “compromises a claim that could otherwise be brought by the state,” it requires that a court “review and approve any settlement of any civil action pursuant to [PAGA]”) (citation omitted).

Although there is no binding authority establishing the standard of review for PAGA settlements, California district courts “have applied a Rule 23-like standard, asking whether the settlement of the PAGA claims is ‘fundamentally fair, adequate, and reasonable in light of PAGA’s policies and purposes.’” *Haralson*, 383 F. Supp. 3d at 972; *see also Botonis v. Bimbo Bakeries USA, Inc.*, 2024 WL 4326916 (E.D. Cal. Sept. 26, 2024) (following *Haralson* and evaluating whether a proposed PAGA settlement was “fundamentally fair, reasonable, and adequate”). This standard is derived principally from the LWDA, which indicated:

It is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the court evaluate whether the settlement meets the standards of being “fundamentally fair, reasonable, and adequate” with reference to the public policies underlying the PAGA.

See O’Connor v. Uber Techs., Inc., 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (citation omitted). When a proposed settlement involves overlapping class action and PAGA claims, courts may employ

1 a “sliding scale” in determining if the proposed settlement is “fundamentally fair, reasonable, and
 2 adequate with reference to the public policies underlying the PAGA.” *O’Connor*, 201 F. Supp. 3d at
 3 1134; *see also Haralson*, 383 F. Supp. 3d at 972 (following *O’Connor*); *Cooks v. TNG GP*, 2020 WL
 4 5535397 at *9-10 (E.D. Cal. Sept. 15, 2020) (same). “[W]here the settlement for the rule 23 class is
 5 robust, the purposes of PAGA may be concurrently fulfilled.” *Cooks*, 2020 WL 5535397 at *10
 6 (quoting *O’Connor*, 201 F. Supp. 3d at 1134).

7 Plaintiff reports that the proposed Settlement Agreement was submitted to the LWDA in
 8 compliance with the Labor Code. (Doc. 70 at 3.) The LWDA did not comment on the notice or
 9 otherwise contact Class Counsel. (Doc. 82 at 2-3; Doc. 82-1 at 3, LippSmith Decl. ¶ 7.) The fact that
 10 the LWDA has not commented upon—or objected to—the Settlement supports final approval. *See*
 11 *Mostajo v. Nationwide Mut. Ins. Co.*, 2023 WL 2918657, at *8 (E.D. Cal. Apr. 12, 2023) (noting the
 12 LWDA did not respond to the submission of the proposed settlement prior to granting final approval of
 13 the PAGA settlement); *Moreno v. Capital Bldg. Maint. & Cleaning Servs.*, 2021 WL 1788447, at *8
 14 (N.D. Cal. May 5, 2021) (“The lack of comment from the LWDA weighs in favor of finding that the
 15 PAGA settlement is reasonable.”).

16 The maximum settlement fund of \$1,906,745.14 appears sufficiently robust—with an estimated
 17 \$1,099,808.14 going to the class members—such that the Court finds the proposed agreement fulfills
 18 the purposes of PAGA, to address the alleged labor violations. Under the Settlement, \$100,000 of the
 19 gross amount is designated as the PAGA payment. (Doc. 70-2 at 7, ¶ 1.18.) The Settlement properly
 20 designates 75% of the PAGA funds to the LWDA—in the amount of \$75,000 gross amount—and the
 21 remaining \$25,000 to the aggrieved employees. (*Id.* at 16, ¶ 4.2.3.) The amount proposed to settle the
 22 PAGA claims, approximately 5% of the gross settlement fund, is consistent with other approved PAGA
 23 payments from class action funds. *See, e.g., Kryzhanovskiy v. Amazon.Com Servs., Inc.*, 2024 WL
 24 4189936, at *15-16 (E.D. Cal. Sept. 12, 2024) (granting final approval of a class settlement that
 25 included a PAGA payment of \$100,000 from a gross settlement fund of \$3,000,000); *Syed v. M-I, LLC*,
 26 2017 WL 3190341 at *9 (E.D. Cal. July 27, 2017) (granting final approval to a settlement, including
 27 \$100,000.00 in PAGA penalties for a California class with a \$3,950,000 gross settlement fund); *Scott v.*
 28 *Blackstone Consulting, Inc.*, 2024 WL 271439, at *8 (S.D. Cal. Jan. 24, 2024) (approving a PAGA

1 payment that was 5% of the gross settlement amount). Consequently, the Court concludes approval of
 2 the settlement related to the PAGA claims is fair, reasonable, and adequate in light of the PAGA's
 3 public policy goals.

CLASS REPRESENTATIVE PAYMENT

5 A class representative may "receive a share of class recovery above and beyond her individual
 6 claim" with a service payment, also known as an "incentive payment." *China Agritech, Inc. v. Resh*,
 7 584 U.S. 732, 747 n. 7 (2018); *see also Staton*, 327 F.3d at 977 ("named plaintiffs ... are eligible for
 8 reasonable incentive payments"). However, additional payments for class representatives are *not* to be
 9 given routinely. The Ninth Circuit observed: "[i]f class representatives expect routinely to receive
 10 special awards in addition to their share of the recovery, they may be tempted to accept suboptimal
 11 settlements at the expense of the class members whose interests they are appointed to guard." *Staton*,
 12 327 F.3d at 975 (citations omitted). Further, "'excessive payments to named class members can be an
 13 indication that the agreement was reached through fraud or collusion.'" *Id.* (citation omitted).

I. Awarding a Service Payment

15 The Ninth Circuit emphasized that "district courts must be vigilant in scrutinizing all incentive
 16 awards." *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1165 (9th Cir. 2013). In evaluating a
 17 request for a service payment, the Court must consider: "'the actions the plaintiff has taken to protect
 18 the interests of the class, the degree to which the class has benefitted from those actions, the amount of
 19 time and effort the plaintiff expended in pursuing the litigation,' and any financial or reputational risks
 20 the plaintiff faced." *Named Plaintiffs & Settlement Class Members v. Feldman (In re Apple Inc.*
Device Performance Litig.), 50 F.4th 769, 786 (9th Cir. 2022) (quoting *Roes, 1-2 v. SFBSC LLC*, 944
F.3d 1035, 1057 (9th Cir. 2019)); *see also Staton*, 327 F.3d at 977. Service payments may also
 23 recognize a plaintiff's "willingness to act as a private attorney general." *Rodriguez v. West Publ'g*
Corp., 563 F.3d 948, 958-59 (9th Cir. 2009).

25 Pursuant to the Settlement, Plaintiff may seek a "Service Payment for an amount not to exceed
 26 \$10,000" from the gross settlement. (Doc. 70-2 at 24, ¶ 4.8.) At the preliminary approval stage, the
 27 Court found that Plaintiff provided "limited information regarding his actions on behalf of the class."
 28 (Doc. 73 at 30-31, citing Doc. 70-4.) The Court also observed Plaintiff did not provide "a clear

1 estimate for the Court to evaluate the time expended,” because Plaintiff simply estimated that he “spent
 2 dozens of hours working on this case to date. (*Id.* at 31, quoting Doc. 70-4 at 4, ¶ 10.) The Court found
 3 the contemplated payment appears to be excessive but granted preliminary approval “given the
 4 flexibility for an award *up to \$10,000.*” (*Id.*; *see also id.* at 31, n. 4.) The Court ordered that at the final
 5 approval stage, “**Plaintiff must provide evidence supporting the requested service payment.**” (*Id.*
 6 at 30, emphasis in original.) Plaintiff now requests a service payment in the amount of \$10,000 and
 7 filed a declaration to support the request. (Doc. 82 at 32-33; *see also* Doc. 82-3.)

8 A. Actions taken to benefit the class and time expended

9 The Eastern District has awarded service payments for “substantial efforts taken as a class
 10 representative when the plaintiff has undertaken at least 30 to 40 hours of work.” *Greer v. Dick's*
 11 *Sporting Goods, Inc.*, 2020 WL 5535399, at *4 (E.D. Cal. Sept. 15, 2020) (internal quotation marks,
 12 citation omitted); *see also Emmons v. Quest Diagnostics Clinical Laboratories, Inc.*, 2017 WL
 13 749018, at *8 (E.D. Cal. Feb. 27, 2017) (awarding payments when each plaintiff reported
 14 “approximately 30-40 hours assisting their attorneys in the prosecution of this lawsuit” [modification
 15 adopted]). Plaintiff reports that he spent expended the following time:

- 16 • 1-2 hours speaking with counsel for an initial interview
- 17 • At least 2 hours looking for documents related to his employment,
 reviewing that information, and sharing the documents with counsel
- 18 • 10-15 hours speaking with counsel and reviewing drafts of the
 complaint
- 19 • 5 hours “considering which of Defendants’ employees [he] could
 contact for corroborating information, contacting those individuals,
 considering the responses of those individuals, and relaying to [the]
 attorneys how these efforts turned out.”
- 20 • 10 hours speaking with one of Defendants’ employees “over the
 course of the case in an effort to obtain as much information as
 possible about Defendants’ business practices and any additional facts
 for context about [Plaintiff’s] own experience working for
 Defendants.”
- 21 • 30-60 minutes “during the week of any and every scheduled hearing”
 to check-in with counsel⁹

22
 23
 24
 25
 26
 27
 28 ⁹ It is unclear what “scheduled hearing[s]” Plaintiff refers to, as this Court took pending matters under
 submission and vacated the hearings.

- 1 • 15-20 hours responding to Defendants' written discovery requests, including reviewing the requests, speaking to counsel, looking for documents, providing responses, and verifying the final responses
- 2
- 3 • 30 minutes talking to his attorney about the possibility of being deposed
- 4
- 5 • 8 hours reviewing "the information [he] provided for the case, the discovery responses [he] provided, and practicing oral responses" to prepare for the potential deposition
- 6
- 7 • 5 hours preparing for the first mediation, including time spent with counsel, reviewing the case status, and reviewing discovery responses
- 8
- 9 • 4 hours preparing for the second mediation, including reviewing his discovery responses, the status, and communications with counsel

(Doc. 82-3 at 2-4, Cruz Sanchez Supp. Decl. ¶¶ 4-11.) Thus, in total it appears Plaintiff identifies approximately 62-72 hours engaged in tasks related to this litigation.¹⁰

Plaintiff likely would have taken many of these actions even if proceeding only with his individual claims. On the other hand, by reviewing documents and assisting with discovery, his actions undoubtedly benefitted Class Members, who will receive an average payment of \$1,996.20 and up to \$5,621.05. (See Doc. 82-4 at 6, ¶ 19.) Thus, the Court finds the amount of time expended and actions taken on behalf of the class support a service payment for Plaintiff.

B. Workplace retaliation

The Court may consider whether the named plaintiff has "reasonable fears of workplace retaliation" in evaluating a request for a service payment. *Staton*, 327 F.3d at 977. However, this Court observed previously that when a class representative was a former employee—as here—retaliation by the defendant was not possible. *See Torcia v. W.W. Grainger, Inc.*, 304 F.R.D. 256, 280

¹⁰ Plaintiff reports he also took a total of four days off work "to be available" to counsel on the days where counsel engaged in mediation, the day counsel filed the motion for preliminary approval, and the day counsel filed the pending motion for final approval. (Doc. 82-3 at 4, ¶ 12.) Plaintiff did not provide any estimate for time he engaged in tasks related to the litigation on the days he elected to take off work. Plaintiff did not attend the mediation sessions and does not report that he actually communicated with counsel on those days. Likewise, it is unclear whether Plaintiff had any communications with Class Counsel on the days they filed the motions for preliminary and final approval. The billing records from Mr. LippSmith—whose firm finalized and filed the motions—do not indicate that any communications with Plaintiff occurred on either of the filing dates of May 30, 2024 or February 25, 2025. (See Doc. 82-1 at 44, 52.) Accordingly, the Court declines to count Plaintiff's days off work as time expended on this matter.

1 (E.D. Cal. 2014). Because Plaintiff cannot suffer workplace retaliation from Defendants, this factor
 2 does not support a service payment.

3 **C. Reputational risk**

4 The Court may consider whether a class representative suffered a risk to his or her reputation
 5 in being a named plaintiff. However, a risk to the named plaintiff's reputation cannot be conclusory or
 6 speculative to support a service payment. *See Wilson v. Telsa, Inc.*, 833 Fed. App'x 59, 62 (9th Cir.
 7 2020) (finding the court did not abuse its discretion in reducing a requested service payment from
 8 \$10,000 to \$5,000 because any potential reputational risk lacked evidentiary support). For example,
 9 this Court found an identified reputational risk was "real and substantial" where the plaintiff reported
 10 that "[f]uture potential employers need only search for [the plaintiff's name] and her former
 11 employer's name to learn that she has pursued wage and hour claims against her former employer."
 12 *Flores v. Dart Container Corp.*, 2021 WL 1985440, at *10 (E.D. Cal. May 17, 2021).

13 Plaintiff does not assert that he suffered a reputational risk by proceeding as a class
 14 representative in this action. (*See generally* Docs. 70-4, 82-3.) Notably, if Plaintiff elected file his
 15 *individual* claims rather than a class action, the complaint will still include his name as the plaintiff.
 16 The Court declines to speculate that Plaintiff suffered any risk to his reputation by proceeding as the
 17 class representative. Therefore, this factor does not support the requested service payment.

18 **D. Financial risks**

19 Courts in the Ninth Circuit have repeatedly acknowledged such a financial risk supports an
 20 incentive payment to a class representative. *See, e.g., Vasquez*, 266 F.R.D. at 491 ("Class
 21 Representatives undertook the financial risk that, in the event of a judgment in favor of Defendant in
 22 this action, they could have been personally responsible for any costs awarded in favor of Defendant");
 23 *Herrera v. Wells Fargo Bank, N.A.*, 2021 WL 9374975, at *14 (C.D. Cal. Nov. 16, 2021) (evaluating a
 24 service payment request and noting the class representatives "faced financial risks should [the
 25 defendant] seek to recover the cost of the defense"). However, Plaintiff does not report that he bore
 26 such a risk, or identify a financial risk as a reason to support the request. (*See* Docs. 70-4, 82-3; *see also* Doc. 82 at 32-33.) The Court declines to assume that Plaintiff was aware of—or bore—any
 27 financial risk. Therefore, this factor does not support a service payment to Plaintiff.
 28

1 **E. Willingness to act as private attorney general**

2 The Ninth Circuit observed that incentive payments may recognize a named plaintiff's
 3 "willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at 958-59. Here, Plaintiff acted
 4 as a private attorney general, which will result in payments to the LWDA and aggrieved employees
 5 under PAGA. (See Doc. 70-2 at 7, Settlement ¶ 1.18.) Accordingly, this factor supports a service
 6 payment for the class representative.

7 **II. Reasonableness of Plaintiff's Request**

8 Considering the factors set forth above—including the actions taken by Plaintiff on behalf of the
 9 class, the time expended, benefit received, and his willingness to proceed as a private attorney
 10 general—a service payment is appropriate. To evaluate the reasonableness of a requested service
 11 payment, the Court may consider several factors, such as the time and actions undertaken by the class
 12 representative, the fairness of the hourly rate, and how large the incentive payment is compared to the
 13 average award class members expect to receive. *See, e.g., In re Online DVD-Rental Antitrust Litig.*,
 14 779 F.3d 934, 947 (9th Cir. 2015); *Ontiveros v. Zamora*, 303 F.R.D 356, 366 (E.D. Cal. Oct. 8, 2014)
 15 (evaluating the hourly rate the named plaintiff would receive to determine whether the incentive award
 16 was appropriate); *Rankin v. Am. Greetings, Inc.*, 2011 WL 13239039, at *2 (E.D. Cal. July 6, 2011)
 17 (noting the incentive award requested was "reasonably close to the average per class member amount to
 18 be received"); *Smith v. Am. Greetings Corp.*, 2016 WL 362395, at *10 (N.D. Cal. Jan. 29, 2016)
 19 ("courts consider the proportionality between the incentive payment and the range of class members'
 20 settlement awards").

21 **A. Actions of the class representative**

22 In *Alvarado*, the Court noted the class representatives "(1) travelled from Bakersfield to
 23 Sacramento for mediation sessions (2) assisted Counsel in investigating and substantiating the claims
 24 alleged in this action; (3) assisted in the preparation of the complaint in this action; (4) produced
 25 evidentiary documents to Counsel; and (5) assisted in the settlement of this litigation." *Id.*, 2011 WL
 26 1883188 at *11. Also, the Court noted the plaintiffs "undertook the financial risk that, in the event of a
 27 judgment in favor of Defendant in this action, they could have been personally responsible for the costs
 28 awarded in favor of the Defendant." *Id.* In light of these facts, the Court found an award of \$7,500 for

1 each plaintiff was appropriate for the time, efforts, and risks undertaken.

2 Likewise, in *Bond*, the Court found incentive payments of \$7,500 were appropriate for the two
 3 named plaintiffs who: “(1) provided significant assistance to Class Counsel; (2) endured lengthy
 4 interviews; (3) provided written declarations; (4) searched for and produced relevant documents; (5)
 5 and prepared and evaluated the case for mediation, which was a full day session requiring very careful
 6 consideration, evaluation and approval of the terms of the Settlement Agreement on behalf of the
 7 Class.” *Bond*, 2011 WL 2648879, at *15. Similarly, the Northern District determined class
 8 representatives failed to justify incentive awards of \$10,000 although the plaintiffs reported “they were
 9 involved with the case by interacting with counsel, participating in conferences, reviewing documents,
 10 and attending the day-long mediation that resulted in the settlement.” *Wade v. Minatta Transport Co.*,
 11 2012 U.S. Dist. LEXIS 12057, at *3 (N.D. Cal. Feb. 1, 2012).

12 Although Plaintiff was not required to attend a mediation session, it appears his remaining
 13 actions are comparable to the plaintiffs in *Alvarado*, *Bond*, and *Wade*. Despite being required to
 14 undertake fewer tasks in this matter, Plaintiff seeks a service payment that is greater than the service
 15 payments those class representatives. Accordingly, this factor does not support a conclusion that the
 16 service payment requested by Plaintiff is fair or reasonable.

17 **B. Hourly rate of compensation**

18 Courts have considered the hourly rate of compensation for a class representative. *See, e.g.*,
 19 *Ontiveros*, 303 F.R.D. at 366; *Moss v. USF Reddaway*, 2018 WL 5099291, at *11 (C.D. Cal. Feb. 15,
 20 2018); *Pappas v. Naked Juice Co of Glendora, Inc.*, 2014 WL 12382279, at *14-15 (C.D. Cal. Jan. 2,
 21 2014). In doing so, the courts declined to issue service awards where the hourly rate for the tasks
 22 completed in the action was excessive or unreasonable. *See, Ontiveros*, 303 F.R.D. at 366; *Moss*, 2018
 23 WL 5099291, at *11; *see also Pappas*, 2014 WL 12382279, at *14-15.

24 For example, this Court criticized a requested award that would have compensated the class
 25 representative “at a rate of \$73.80 per hour.” *Ontiveros*, 303 F.R.D. at 366. In evaluating the
 26 reasonableness of the award, the Court noted Ontiveros was paid \$15 per hour while employed by the
 27 defendant. *Id.* at 366, n.3. The Court explained that “[i]ncentive awards should be sufficient to
 28 compensate class representatives to make up for financial risk … for example, for time they could have

1 spent at their jobs.” *Id.* at 366 (citing *Rodriguez*, 563 F.3d at 958-59. The Court found an award of
 2 “\$50 per hour fairly compensate[] the named plaintiff for his time,” and rounded the \$13,500 total up to
 3 \$15,000 to “incorporate[] an extra incentive to participate in litigation.” *Id.*

4 The Central District declined to approve service payments to the class representatives where the
 5 proposed amount resulted in “extremely high hourly rates.” *Moss*, 2018 WL 5099291, at *11. The
 6 court observed the requested award of \$25,000 for each of the class representatives, Moss and Watkins,
 7 was “the equivalent of a payment of approximately \$210 per hour to Moss and \$470 per hour to
 8 Watkins.” *Moss*, 2018 WL 5099291, at *11. Therefore, the court reduced the proposed award to each
 9 class representative. *Id.*

10 Plaintiff reports that he was “an hourly-paid, non-exempt employee” while working for
 11 Defendants. (*See* Doc. 70-4 at 2, ¶ 2.) Although Plaintiff did not provide any information concerning
 12 his hourly rate, Class Counsel report the average hourly rate of pay from Defendants was \$21.23. (Doc.
 13 7-1 at 13, ¶ 34.) The requested service payment to Plaintiff—based upon the estimated 62 to 72 hours
 14 he spent on the matter—would result in an hourly rate of \$139 to \$161. This hourly rate is clearly
 15 excessive. *See Ontiveros*, 303 F.R.D. at 366; *see also Leverage v. Traeger Pellet Grills, LLC*, 2017
 16 WL 6405619 (N.D. Cal. Dec. 15, 2027) (approving class representative awards that “result[ed] in an
 17 approximately \$50 hourly rate”); *Pappas, Inc.*, 2014 WL 12382279, at *14-15 (reducing the service
 18 awards to \$58 per hour for each class representative). If the Court were to adopt the \$50 hourly rate
 19 approved in *Ontiveros* and *Leverage*, the service payment for Plaintiff would be reduced to a maximum
 20 of \$3,600. Thus, the hourly rate does not support a service payment in the amount requested.

21 C. Comparison of the award to those of the Class Members

22 The Ninth Circuit indicated the Court may consider the “proportion of the [representative]
 23 payment[s] relative to the settlement amount, and the size of each payment.” *In re Online DVD-*
Rental Antitrust Litig., 779 F.3d at 947; *see also Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244,
 24 1265 (C.D. Cal. 2016). For example, in *Rankin*, the Court approved a service award of \$5,000, where
 25 the “[p]laintiff retained counsel, assisted in the litigation, and was an active participant in the full-day
 26 mediation.” *Id.*, 2011 WL 13239039, at *2. The Court found the amount reasonable, observing it was
 27 “reasonably close to the average per class member amount to be received.” *Id.*

1 The requested award for Plaintiff is approximately 5 times the average award of \$1,996.20 for
 2 the Class Members. In addition, the requested award is approximately 0.52% of the gross settlement
 3 fund, which appears excessive. *Compare with In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,
 4 947 (9th Cir. 2015) (awarding \$5,000 as a service payment, which was 0.17% of the gross settlement
 5 fund); *Spann*, 211 F.Supp.3d at 1265 (awarding a class representative payment of \$10,000, which was
 6 less than 0.25 percent of the gross settlement). Given the disparity between the average award and
 7 Plaintiff's requested service payment—as well as the percentage of the settlement fund—this factor
 8 does not support the amount requested and instead favors a reduction to the service award.

9 **III. Amount to be Awarded**

10 A “substantial effort” by a plaintiff is necessary to support a service payment of \$10,000. *See*
 11 *Coburn v. City of Sacramento*, 2020 WL 7425345, at *8 (E.D. Cal. Dec. 17, 2020); *see also Amaro v.*
 12 *Gerawan Farming Inc.*, 2020 WL 6043936, at *10 (E.D. Cal. Oct. 12, 2020) (awarding a payment of
 13 \$10,000 to plaintiffs who each spent over 370 hours during the course of the litigation on tasks such as
 14 “talking to co-workers, assisting class counsel, attending the mediation, and organizing class members
 15 to keep them apprised of the status of [the] case”); *Valentine v. Rehab. Ctr. of Santa Monica Holding*
 16 *Co. GP, LLC*, 2021 U.S. Dist. LEXIS 243660, at *13-14 (C.D. Cal. Dec. 20, 2021) (finding the class
 17 representative failed to justify a service enhancement of \$10,000, though the plaintiff reported 59.5
 18 hours on the litigation, during which she “was deposed, worked closely with [class] counsel, assisted
 19 in the preparation of pleadings, provided factual information and assisted in identifying potential
 20 witnesses”).

21 Because the factors discussed above support an incentive award—and the actions of Plaintiff
 22 clearly benefited Class Members—a service payment is appropriate. However, the amount requested is
 23 not fair or reasonable. As noted above, the application of a \$50 hourly rate to the estimated 62 to 72
 24 hours in Plaintiff's declaration results in an award of \$3,100 to \$3,600. On the other hand, Plaintiff
 25 released all potential claims related to his employment with Defendants. (*See* Doc. 70-2 at 4-5,
 26 Settlement ¶ 1.8; Doc. 70-4 at 3, Cruz Sanchez Decl. ¶ 7.) This Court indicated that a plaintiff
 27 sacrificing “the opportunity to bring several of his own claims” supported an increase to a service
 28 payment, even if “unclear whether those claims would have had merit.” *Ontiveros*, 303 F.R.D. at 366.

1 Thus, a small increase to the award is appropriate. *See id.*

2 The Court finds an award of \$5,000 is fair and reasonable in this matter. This amount
 3 compensates Plaintiff for his time expended, is about 2.5 times the average payment to Class Members,
 4 and is approximately 0.26% of the gross settlement fund. In addition, this amount appropriately
 5 compensates Plaintiff for the time expended on actions related to this litigation, while including a
 6 modest increase for the broader release of his claims. Accordingly, the Court grants Plaintiff's request
 7 for a service payment in the modified amount of \$5,000.¹¹

REQUEST FOR ATTORNEYS' FEES

9 Pursuant to the Settlement, Class Counsel may request fees in the amount of \$665,000.00,
 10 which is 35% of the gross settlement fund. (Doc. 70-2 at 7, ¶ 1.18; *see also id.* at 24, ¶ 4.7.) Class
 11 Counsel now request this amount be awarded in attorney fees, asserting the amount is reasonable and
 12 fair. (Doc. 82 at 24-31.) Defendants agreed to not oppose this fee request. (Doc. 70-2 at 24, ¶ 4.7.)

I. Legal Standards

14 “[A] district court must carefully assess the reasonableness of a fee amount spelled out in a class
 15 action settlement agreement.” *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). Thus, a court
 16 “may not uncritically accept a fee request,” but must review the time billed and assess whether it is
 17 reasonable in light of the work performed and the context of the case. *Common Cause v. Jones*, 235 F.
 18 Supp. 2d 1076, 1079 (C.D. Cal. 2002); *see also McGrath v. County of Nevada*, 67 F.3d 248, 254 n.5
 19 (9th Cir. 1995) (a court may not adopt representations regarding the reasonableness of time expended
 20 without independent review); *Sealy, Inc. v. Easy Living, Inc.*, 743 F.2d 1378, 1385 (9th Cir. 1984)
 21 (remanding an action for a thorough inquiry on the fee request when “the district court engaged in the
 22 ‘regrettable practice’ of adopting the findings drafted by the prevailing party wholesale” and explaining
 23 a court should not “accept[] uncritically [the] representations concerning the time expended”).

24 Class Counsel assert the reasonableness of the fee request should be evaluated under California
 25 law, because the Court has diversity jurisdiction over this action. (Doc. 82 at 24, citing *Hartless v.*
 26

27 ¹¹ This service payment also aligns with the amount considered “presumptively reasonable” by courts in the
 28 Ninth Circuit. *See Weiner v. Ocwen Fin. Corp.*, 2024 WL 4458383, at *6 (E.D. Cal. Oct. 10, 2024); *see also*
Wong v. Arlo Techs. Inc., 2021 WL 1531171, at *12 (N.D. Cal. Apr. 19, 2021) (noting that “[s]ervice awards as
 high as \$5,000 are presumptively reasonable” in the Ninth Circuit and collecting cases).

1 *Clorox Company*, 273 F.R.D. 630, 642 (S.D. Cal. 2011).) Indeed, the Ninth Circuit indicated that state
 2 law governing underlying claims in a diversity action “also governs the award of fees.” *Vizcaino v.*
 3 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Circ. 2002). However, Class Counsel contend the fee
 4 request is also reasonable under Ninth Circuit precedent. (Doc. 82 at 25-32.) Notably, as discussed
 5 below, both state and federal courts consider similar tests to evaluate the reasonableness of the fees
 6 requested from a settlement fund.

7 The Court has discretion to use either a lodestar or percentage of the common fund calculation
 8 to evaluate a fee request. *Named Plaintiffs & Settlement Class Members v. Feldman (In re Apple Inc.*
 9 *Device Performance Litig.)*, 50 F.4th 769, 786 (9th Cir. 2022); *see also Lafitte v. Robert Half Int'l Inc.*,
 10 1 Cal.5th 480, 504 (2016) (“The choice of a fee calculation method is generally one within the
 11 discretion of the trial court, the goal under either the percentage or lodestar approach being the award of
 12 a reasonable fee to compensate counsel for their efforts.”). The Ninth Circuit observed that “either
 13 method may ... have its place in determining what would be reasonable compensation.” *Paul,*
 14 *Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). Whether the Court applies the
 15 lodestar or percentage method, the fees awarded must comply with Rule 23 and be “fundamentally fair,
 16 adequate, and reasonable.” *Staton*, 327 F.3d at 963 (quoting Fed. R. Civ. P. 23(e)).

17 A. **Lodestar method**

18 The lodestar method calculates attorney fees by “by multiplying the number of hours reasonably
 19 expended by counsel on the particular matter times a reasonable hourly rate.” *Florida*, 915 F.2d at 545
 20 n. 3 (citing *Hensley*, 461 U.S. at 433); *see also Lafitte*, 1 Cal. 5th at 489. The product of this
 21 computation, the “lodestar” amount, yields a “presumptively reasonable” fee. *Gonzalez v. City of*
 22 *Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013); *Edmo v. Corizon, Inc.*, 97 F.4th 1165, 1168 (9th Cir.
 23 2024). Next, the Court may adjust the lodestar upward or downward using a “multiplier” considering
 24 factors adopted by the Ninth Circuit:

25 (1) the time and labor required, (2) the novelty and difficulty of the
 26 questions involved, (3) the skill requisite to perform the legal service
 27 properly, (4) the preclusion of other employment by the attorney due to
 28 acceptance of the case, (5) the customary fee, (6) whether the fee is fixed
 or contingent, (7) time limitations imposed by the client or the
 circumstances, (8) the amount involved and the results obtained, (9) the
 experience, reputation, and ability of the attorneys, (10) the
 “undesirability” of the case, (11) the nature and length of the professional

1 relationship with the client, and (12) awards in similar cases.¹²
 2 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *see also Quesada v. Thomason*, 850
 3 F.2d 537, 539 (9th Cir. 1988) (indicating the Court should “consider[] some or all twelve relevant
 4 criteria set forth in *Kerr*” to determine whether to deviate from the lodestar). Likewise, under
 5 California law, “[o]nce the court has fixed the lodestar, it may increase or decrease that amount by
 6 applying a positive or negative multiplier to take into account a variety of other factors, including the
 7 quality of the representation, the novelty and complexity of the issues, the results obtained, and the
 8 contingent risk presented.” *Laffitte*, 1 Cal.5th at 489 (internal quotation marks omitted).

9 **B. Percentage from the common fund**

10 As the name suggests, under this method, “the court makes a fee award on the basis of some
 11 percentage of the common fund.” *Florida*, 915 F.2d at 545 n. 3. “The typical range of acceptable
 12 attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value, with 25%
 13 considered the benchmark.” *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 491 (E.D. Cal. 2010);
 14 *see also In re Apple Inc. Device Performance Litig.*), 50 F.4th 769, 786 (9th Cir. 2022) (noting the
 15 Ninth Circuit established “[t]he benchmark percentage is 25%” of the common fund). Although
 16 California courts have not adopted the same 25% benchmark, this percentage “is within the range of
 17 what courts will award as a percentage of the common fund in California.” *Ridgeway v. Wal-Mart*
 18 *Stores Inc.*, 269 F. Supp. 3d 975, 1000 (N.D. Cal. 2017) (citations omitted).

19 To evaluate whether the requested percentage is reasonable, courts may consider a number of
 20 factors, including: (1) the results obtained for the class; (2) the risks undertaken by class counsel,
 21 including the complexity of the issues; (3) the length of the professional relationship between class
 22 counsel and the plaintiffs; and (5) the market rate, with a lodestar cross-check. *Vizcaino v. Microsoft*
 23 *Corp.*, 290 F.3d 1043, 1048-1050 (9th Cir. 2002); *Six Mexican Workers v. Ariz. Citrus Growers*, 904
 24 F.2d 1301, 1311 (9th Cir. 1990); *see also Laffitte*, 1 Cal. 5th at 504 (determining the reasonableness of
 25 percentage fee through considering “the risks and potential value of the litigation;” the “contingency,
 26 novelty and difficulty” of the case; and “the skill shown by counsel, the number of hours worked, and
 27

28 ¹² The Ninth Circuit has since determined the “desirability” of a case is no longer a relevant factor. *Resurrection Bay Conservation Alliance v. City of Seward*, 640 F.3d 1087, 1095, n.5 (9th Cir. 2011) (citation omitted).

1 the asserted hourly rates”). The percentage awarded as fees may be adjusted below or above the
 2 benchmark, but the Court’s reasons for adjustment must be clear. *Graulty*, 886 F.2d at 272; *see also In*
 3 *re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“courts typically calculate
 4 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the
 5 record of any ‘special circumstances’ justifying a departure”).

6 C. Fee applicants’ burden

7 Notably, the Court must consider similar factors under both the lodestar method and awarding a
 8 percentage of the common fund. *See Kerr*, 526 F.2d at 70; *Vizcaino*, 290 F.3d at 1048-1050. With
 9 either method, the fee applicant bears the burden of establishing that the fees and costs were reasonably
 10 necessary to achieve the results obtained. *See Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1119 (9th
 11 2000). Therefore, a fee applicant must provide records documenting the tasks completed and the
 12 amount of time spent. *Hensley v. Eckerhart*, 461 U.S. 424, 424 (1983); *Welch v. Metropolitan Life Ins.*
 13 *Co.*, 480 F.3d 942, 945-46 (9th Cir. 2007). “Where the documentation of hours is inadequate, the
 14 district court may reduce hours accordingly.” *Hensley*, 461 U.S. at 433.

15 **II. Evaluation of the Fees Requested**

16 Under the “common fund” doctrine, attorneys who create a common fund for a class may be
 17 awarded fees from that fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“a lawyer who
 18 recovers a common fund for the benefit of persons other than himself or his client is entitled to a
 19 reasonable attorney’s fee from the fund as a whole”). An award from the common fund “rests on the
 20 perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly
 21 enriched at the successful litigant’s expense,” and application of the doctrine is appropriate “when each
 22 member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-
 23 sum judgment recovered on his behalf.” *Boeing*, 444 U.S. at 478. Because the Settlement applies a *pro*
 24 *rata* distribution formula to determine the amount paid to each Class Member, the Court finds
 25 application of the common fund doctrine is appropriate.

26 Significantly, when fees are to be paid from a common fund, as here, the relationship between
 27 the class members and counsel “turns adversarial.” *In re Washington Pub. Power Supply Sys. Sec.*
 28 *Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994). The Ninth Circuit observed:

1 [A]t the fee-setting stage, plaintiff's counsel, otherwise a fiduciary for the
 2 class, has become a claimant against the fund created for the benefit of the
 3 class. It is obligatory, therefore, for the trial judge to act with a jealous
 regard to the rights of those who are interested in the fund in determining
 what a proper fee award is.

4 *Id.* at 1302 (internal quotation marks, citation omitted). As a result, the Court must assume a fiduciary
 5 role for the class members in evaluating the reasonableness of a request for fees from the common
 6 fund. *Id.; Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 968 (9th Cir. 2009) (“when fees are to come
 7 out of the settlement fund, the district court has a fiduciary role for the class”).

8 **A. Time and labor required**

9 Class Counsel report they worked more than 700 hours on this matter through the preparation
 10 of the motion for final approval. This reported amount includes up to 498.5 hours by LippSmith
 11 LLP¹³ and 209.6 hours by Lawyers for Justice. (Doc. 82-1 at 5, LippSmith Decl. ¶ 15; Doc. 82-2 at 6,
 12 St. John Decl. ¶ 11.) Class Counsel have not identified any evidence that they were precluded from
 13 other work because of this action. The fact that no attorney expended more than 150 hours on this
 14 action—which was filed five years ago—supports a conclusion that the time and labor required did not
 15 preclude other work by either LippSmith LLP or LFJ. As a result, this factor does not support the
 16 requested upward departure from the benchmark.

17 **B. Results obtained for the Class**

18 The result achieved for the class is a significant factor to be considered in making a fee award.
 19 *Hensley*, 461 U.S. at 436; *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 45 (2000)
 20 (“California courts often use ... the result obtained by counsel” as a relevant factor to evaluate fees,
 21 including enhancing a lodestar). The Ninth Circuit observed, “It matters little that the plaintiffs’
 22 counsel may have poured their blood, sweat, and tears into a case if they end up merely spinning
 23 wheels on behalf of the class. What matters most is the result for the class members.” *Lowery v.*
 24 *Rhapsody Int'l, Inc.*, 69 F.4th 994, 997 (9th Cir. 2023). For this reason, obtaining “exceptional

25
 26¹³ There is a small discrepancy in the total hours reported. The lodestar chart in the declaration provided by Mr.
 27 LippSmith indicates lawyers and professional staff at LippSmith LLP worked 498.5 hours when time for each
 28 individual is added. (Doc. 82-1 at 5, ¶ 15.) However, the billing records from LippSmith LLP reflect a total of
 495.6 hours. (*Id.* at 52.) For purposes of calculating the lodestar below, the Court will use the information
 reflected in the chart.

1 results” for the class will support an upward departure from the benchmark fee award. *Vizcaino*, 290
 2 F.3d at 1048; *see also Oliveria v. Language Line Servs.*, 767 F. Supp. 3d 984, 1007 (N.D. Cal. 2025)
 3 (finding an upward departure from the benchmark was appropriate based upon the “strong results
 4 achieved” by counsel for a class and collective).

5 Class Counsel assert they obtained “significant benefits for the Class” and “exceptional
 6 results.” (Doc. 82 at 27; *id.* at 29, emphasis omitted.) Class Counsel observe the action settled for “a
 7 Maximum Settlement Amount of \$1,906,745.14 with average estimated Individual Settlement
 8 Payments of \$1,996.20, and average Individual PAGA Payments of \$55.19.” (*Id.* at 29-30.) Notably,
 9 as discussed above, the anticipated net amount of \$1,124,908.14 is 8.4% of the calculated maximum
 10 potential recovery for the meal, rest break, overtime, and PAGA penalties. Although the recovery to
 11 class members is positive, the recovery is not so exceptional or remarkable to justify an upward
 12 departure from the benchmark. *See, e.g., Monterrubio*, 291 F.R.D. at 466 (finding the result was not
 13 “exceptional” where the recovery for the class equaled “30% of Plaintiff’s calculation of Defendant’s
 14 maximum liability exposure”); *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 983 (E.D. Cal.
 15 2012) (recovery of \$2,000 per class member in wage and hour class action was “not so exceptional” in
 16 it of itself to “justify an increase in the 25% benchmark”). Therefore, this factor does not support the
 17 requested fee award amounting to 35% of the common fund.

18 C. Risks undertaken by counsel

19 The risk undertaken is an important factor in determining the fee award. *Chemical Bank v. City*
 20 *of Seattle*, 19 F.3d 1297, 1299-1301 (9th Cir. 1994). The Supreme Court explained, “the risk of loss in
 21 a particular case is a product of two factors: (1) the legal and factual merits of the claim, and (2) the
 22 difficulty of establishing those merits.” *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992). When
 23 class counsel undertake an “extremely risky” action, an upward departure from the benchmark is
 24 appropriate. *Vizcaino*, 290 F.3d at 1048. For example, the Ninth Circuit determined an award above
 25 the benchmark was appropriate where “counsel pursued [the] case in the absence of supporting
 26 precedents,” and “[t]wice plaintiffs lost in the district court — once on the merits, once on the class
 27 definition — and twice counsel succeeded in reviving their case on appeal.” *Id.*, 290 F.3d at 1048.

28 Class Counsel assert they faced risks in this action because “to prevail, Plaintiff would be

1 required to move for class certification successfully, defeat summary judgment, and receive a
 2 favorable verdict that would withstand an appeal.” (Doc. 82 at 17; *see also id.* at 28.) They also assert
 3 that “[c]ertifying a class of 551 current and former employees presents complex issues that could
 4 undermine certification at class certification and in later stages of litigation.” (*Id.* at 17.) According to
 5 Class Counsel, “Contesting class certification would likely involve factual and legal arguments,
 6 including potential individualized issues that may place Class Members in conflict with each other.”
 7 (*Id.*) Ultimately, Class Counsel contend the litigation risks “included procedural challenges,
 8 substantive challenges, and difficulty proving an entitlement to remedies.” (*Id.* at 30.)

9 Importantly, Class Counsel do not identify specific legal or factual risks, or address show a
 10 particular difficulty of establishing the merits of the claims raised. (*See Doc. 82 at 30.*) It appears the
 11 risks related to the legal merits were not novel but were rather typical of those faced in wage and hour
 12 class action, including seeking class certification. The general risks support an award at the
 13 benchmark, rather than an upward departure. *See Vizcaino*, 290 F.3d at 1048; *see also Sebastian v.*
 14 *Sprint/United Mgmt. Co.*, 2019 WL 13037010, at *7 (C.D. Cal. Dec. 5, 2019) (risks that are common
 15 to “wage-and-hour-class actions … counsel[] in favor of approving the fee award at the benchmark”).

16 **D. Financial risk related to contingent fee**

17 Class Counsel contend they “took a significant risk of non-payment” by taking on this action.”
 18 (Doc. 82 at 87, emphasis omitted.) Class Counsel report Plaintiff entered into a “contingency-fee
 19 agreement,” under which he “agreed to a contingency fee of at least 35 of the recovery.” (Doc. 82-1 at
 20 6, St. John Decl. ¶ 9.) Despite the fact that Class Counsel worked on a contingency basis, there is no
 21 evidence that Class Counsel faced atypical risks in doing so with this case. Mr. LippSmith indicates
 22 that he is “a contingency class action lawyer,” and as a result it appears that a significant portion of his
 23 practice involves work that on a contingency fee basis. (Doc. 82-1 at 3, LippSmith Decl. ¶ 9.)

24 Notably, contingency fee agreements between class representatives and counsel “are not
 25 particularly helpful because retainer agreements do not involve, and are not binding, on the class.”
 26 *Kanawi v. Bechtel Corp.*, 2011 WL 782244, at *2 (N.D. Cal. Mar. 1, 2011) (citing *Vizcaino*, 290 F.3d
 27 at 1050); *see also Ruiz v. Towne Air Freight, Inc.*, 2018 WL 5936551, at *1 (C.D. Cal. Mar. 13, 2018)
 28 (concluding that a 35% agreed-upon contingency fee did not justify an upward departure from the

1 benchmark in a wage-and-hour class action because it was “more a reflection of the Class
 2 Representatives’ relative lack of sophistication and negotiation abilities than anything else”).
 3 Plaintiff’s agreement does not bind the class members to the 35% contingency fee indicated in the
 4 agreement, and it does not assist this Court in determining whether the fees requested from the common
 5 fund are fair or reasonable.

6 Moreover, the Ninth Circuit has suggested the distinction between a contingency arrangement
 7 and a fixed fee arrangement may not be a relevant factor, depending on whether the Court applies the
 8 lodestar method or the common fund method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654
 9 F.3d 935, 942 n.7. (9th Cir. 2011) (“whether the fee was fixed or contingent” is “no longer valid” as a
 10 factor in evaluating reasonable fees) (citation omitted); *but see In re Online DVD-Rental Antitrust*
 11 *Litigation*, 779 F.3d 934, 954-55 (9th Cir. 2015) (finding the contingent nature of litigation remains a
 12 relevant factor to evaluate a request from the common fund). Regardless, the risk associated with the
 13 contingent nature of the fee alone does not justify an upward departure of the benchmark. *See Correa*
 14 *v. Zillow, Inc.*, 2021 WL 4925394, at *6 (C.D. Cal. June 14, 2021) (standing alone, “the attorneys’
 15 contingent risk... does not justify an upward departure of the benchmark”); *Clayton v. Knight Transp.*,
 16 2013 WL 5877213, at *8 (E.D. Cal. Oct. 30, 2013) (acknowledging the contingent nature was “an
 17 important factor,” but declining to grant an upward departure where “the risks associated with this
 18 case are no greater than [those] associated with any other wage and hour action and no extraordinary
 19 circumstances exist that would support an increase from the 25% benchmark”); *Fan v. Delta Air Lines*,
 20 2020 WL 5044614, at *4 (C.D. Cal. May 20, 2020) (finding a fee award of 25% of the settlement fund
 21 was appropriate where counsel proceeded on a contingency basis because “nearly all wage and hour
 22 class action litigation is conducted [in this manner]”). Because Class Counsel do not identify any
 23 unusual risk with the contingent nature of their fee in this action, this factor does not support the
 24 requested upward departure from the benchmark. *See Vizcaino*, 290 F.3d at 1048.

25 **E. Complexity of issues and skill required**

26 The complexity of issues and skills required may support a departure from the benchmark fee
 27 award. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (finding no abuse of
 28 discretion in awarding attorney’s fees that totaled 33% settlement fund, finding a departure from the

1 benchmark was warranted “because of the complexity of the issues and the risks”); *see also Ayala v.*
 2 *Valley First Credit Union*, 2024 WL 1053820, at *7 (E.D. Cal. Mar. 11, 2024) (“Courts have
 3 recognized that the novelty, difficulty and complexity of the issues involved are significant factors in
 4 determining a fee award” [citation omitted]).

5 Class Counsel assert this is a “complex case.” (Doc. 82 at 29.) However, Class Counsel do not
 6 identify any specific complex legal or factual issues faced in this matter. On the other hand, the overall
 7 experience of Class Counsel undoubtedly benefited Plaintiff and Class Members. As noted, Class
 8 Counsel engaged in discovery, “engag[ed] a data analytics expert,” and calculated damages in advance
 9 of the mediation sessions. (Doc. 82 at 19; *see also* Doc. 82-2 at 3-5, St. John Supp. Decl. ¶¶ 4-8.)
 10 Based upon the information provided, Class Counsel displayed skills consistent of those that would be
 11 expected of attorneys of comparable experience. The skill and experience of Class Counsel with wage
 12 and hour class action litigation very likely assisted the parties in evaluating the strengths and
 13 weaknesses of the action. Accordingly, the Court finds this factor supports an award equal to the
 14 benchmark. *See Monterrubio*, 291 F.R.D. at 458 (declining to depart from the benchmark based upon
 15 the “skill and quality of the work in [the] particular case,” though acknowledging counsel were “skilled
 16 litigators in the wage and hour context”).

17 **F. Length of the professional relationship**

18 The records from Mr. St. John indicate “Lawyers for Justice” first began working on this action
 19 in 2019. (*See* Doc. 82-2 at 42.) It appears the professional relationship between Plaintiff and Class
 20 Counsel has lasted approximately six years. The duration of the professional relationship may warrant
 21 an award below the benchmark. *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311
 22 (9th Cir. 1990) (finding “the 25 percent standard award” was appropriate although “the litigation lasted
 23 more than 13 years”).

24 **G. Awards in other cases**

25 Class Counsel observe, “A leading authority recognizes that ‘[e]mpirical studies show that . . .
 26 fee awards in class actions average around one-third of the recovery.’” (Doc. 82 at 30, quoting
 27 *Hershey v. ExxonMobil Oil Corp.*, 2012 U.S. Dist. LEXIS 153803, *21-22 (D. Kan. Oct. 26, 2012)
 28 [citing 4 H. Newberg & A. Conte, *Newberg on Class Actions*, § 14:6 (4th ed. 2006)].) Class Counsel

1 acknowledge that “[t]he typical range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent to
 2 33.3 percent of the total settlement value, with 25 percent considered a benchmark percentage.” (*Id.* at
 3 30-31, quoting *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 488 (E.D. Cal. 2013).) However,
 4 Class Counsel contend that “[f]orty percent contingency case retainers are typical in California.” (*Id.*
 5 at 31, citing LippSmith Decl. ¶ 17 [Doc. 82-1 at 6].) As discussed above, however, the case retainer
 6 agreement between Plaintiff and Class Counsel agreement does not assist this Court in analyzing
 7 whether the fees requested are fair and reasonable.

8 In the memorandum to support final approval, Class Counsel do not discuss—let alone
 9 identify—any specific fee awards in other matters to support a conclusion that the upward departure
 10 from the benchmark is appropriate in this matter. (*See Doc. 82 at 31.*) However, in a supplemental
 11 declaration, Mr. St. John contends: “A review of comparable court-approved class action settlements
 12 obtained by Class Counsel within the last three [] years, involving the same or similar types of
 13 employees, claims, and/or issues … shows that the Settlement is fair, reasonable, and adequate, and in
 14 the best interests of the Class.” (Doc. 83 at 3, Supp. Decl. ¶ 5.) In support of this assertion, he cites the
 15 class settlements in *Lewis v. ABB Optical Group, LLC*, Alameda County Superior Court, Case No.
 16 RG19008874; *Harper v. DGA, Inc. dba Pro- Form Laboratories*, Solano County Superior Court, Case
 17 No. FCS051001; and *Garcia v. Clinicas De Salud Del Pueblo, Inc.*, Riverside County Superior Court,
 18 Case No. RIC1905175. (*Id.*) From a review of the information provided—including the total
 19 settlement amounts, number of participating class members, the average recovery, and the specific
 20 amount of fees awarded—it appears Class Counsel received fees in the amount of 30% of the fund in
 21 *Lewis*, 35% of the fund in *Harper*, and 35% of the fund in *Garcia*. (*See id.* at 3-4.) However, Class
 22 Counsel do not provide any information regarding the analysis performed by the courts to evaluate the
 23 fee requests, such as the stage of the proceedings when the settlement was reached, the challenges
 24 faced, such as certification, decertification, or other dispositive motions; or the hours worked. To that
 25 extent, the Court is unable to find the identified fee awards support a conclusion that the fees requested
 26 here are fair and reasonable.

27 **H. Lodestar crosscheck and market rate**

28 The Court may perform a lodestar cross-check to assist in the determination of whether the fees

sought from a common fund are reasonable. *See Indirect Purchaser Class v. Erwin (In re Optical Disk Drive Prods. Antitrust Litig.)*, 959 F.3d 922, 933 (9th Cir. 2020) (“we have encouraged courts using the percentage-of-recovery method to perform a cross-check by applying the lodestar method to confirm that the percentage-of-recovery amount is reasonable”); *Lafitte*, 1 Cal. 5th at 504 (“[a] lodestar cross-check … provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee”). The lodestar is calculated with multiplying the time “reasonably expended” in the action by “a reasonable hourly rate.” *Florida*, 915 F.2d at 545 n. 3 (citing *Hensley*, 461 U.S. at 433); *see also Lafitte*, 1 Cal. 5th at 489.

Class Counsel report the lodestar totals \$763,799 and contend this supports an award of fees in the amount requested of \$665,000. (Doc. 82 at 25-29; Doc. 82-1 at 5, LippSmith Decl. ¶ 15 & Table 1.) However, this lodestar calculation from Class Counsel suffers serious flaws, particularly as to the inclusion of the “anticipated” time and the hourly rates applied.

1. Time expended

In general, the first step in determining the lodestar is to determine whether the number of hours expended was reasonable. *Fischer*, 214 F.3d at 1119; *Lafitte*, 1 Cal. 5th at 489. When the lodestar is used as a cross-check for a fee award, the Court is not required to perform an “exhaustive cataloguing and review of counsel’s hours.” *See Barbosa*, 297 F.R.D. at 451 (citation omitted). However, the Court has the discretion to review submitted time sheets to determine whether the time expended was reasonable. *See In re Washington Public Power Supply System Securities Litig.*, 19 F.3d 1291, 1298 (9th Cir. 1994) (concluding the district court acted within its discretion in reducing the lodestar for unnecessary and duplicative work); *see also Lafitte*, 1 Cal. 5th at 505 (“trial courts retain the discretion to consider detailed time sheets as part of a lodestar calculation, even when performed as a cross-check on a percentage calculation”).

The Court reviewed the billing records and time charts from LippSmith LLP and Lawyers for Justice, which show a total of more than 700 hours on this matter. (Doc. 82-1 at 11-52; Doc. 82-2 at 22-40.) The time Class Counsel expended on the litigation involved preparation of the pleadings, challenges to jurisdiction, extensive discovery, communications with Plaintiff, interviews with putative class members, two mediation sessions, and communications with the Settlement Administrator.

1 Although there were multiple lawyers working on this matter, it does not appear that it resulted in
 2 duplicative work or overbilling. The Court finds the 498.5 hours by LippSmith LLP and 209.6 hours
 3 by Lawyers for Justice were reasonable on this matter.¹⁴

4 2. Anticipated hours

5 The lodestar calculation from Class Counsel includes 50 hours of “future time” for work
 6 following the filing of this motion. (Doc. 82-1 at 5, ¶ 15.) Mr. LippSmith reports this is time that
 7 “Class Counsel anticipates devoting to final approval proceedings, settlement implementation, and
 8 submissions of final accounting at the end of the Settlement period.” (*Id.*, ¶ 16.) Importantly, the Court
 9 vacated the final approval hearing and counsel were not required to travel to the hearing as planned.
 10 (*See Doc. 88 at 3 [explaining future costs identified by counsel included travel costs for the hearing].*)
 11 Class Counsel do not provide any explanation regarding how they estimated the time for settlement
 12 implementation and administration. The Court declines to speculate as to the time to be expended and
 13 cannot find the amount is reasonable given the lack of evidence supporting the estimate. Therefore, the
 14 Court deducts the 50 hours of “future time” from the lodestar calculation below. *See Freshko Produce*
 15 *Servs. v. Write On Marketing*, 2019 WL 3798491 at *3 (E.D. Cal. Aug. 13, 2019) (reducing
 16 “anticipated fees” from a lodestar calculation where there was “no documentation or explanation
 17 regarding time that would be spent enforcing the judgment” and the “declin[ing] to speculate as to the
 18 actual time that will be spent”).

19 3. Hourly rates

20 Next, the Court must determine whether the hourly rates are reasonable to calculate the lodestar.
 21 *See Florida*, 915 F.2d at 545 n.3; *see also Lafitte*, 1 Cal. 5th at 489. The Supreme Court explained

23 ¹⁴ The billing records from LippSmith LLP erroneously included a limited number of clerical tasks in the billing
 24 records, related to reviewing calendar deadlines, performing a conflict check, and compiling/formatting the
 25 timesheet data. (*See generally* Doc. 82 at 11-52.) Such clerical tasks generally should be omitted from the
 26 lodestar calculation. *See Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10 (1989) (“purely clerical or secretarial
 27 tasks should not be billed, regardless of who performs them”); *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th
 28 Cir. 2009) (“time [that] was clerical in nature ... should have been subsumed in firm overhead”); *see also Ede v.*
Comm'r of Soc. Sec., 2024 WL 2209680, at *3 (E.D. Cal. May 16, 2024) (indicating “reviewing calendar
 deadlines” is a clerical task); *Acosta v. Perez*, 2021 WL 3910543, at *13 (E.D. Cal. Sept. 1, 2021) (identifying a
 conflict check as clerical work). However, because the total time reported by the firm is nearly 500 hours, the
 Court declines to recalculate the lodestar to deduct the minimal clerical entries from the total for purposes of the
 cross-check.

1 attorney fees are to be calculated with “the prevailing market rates in the relevant community.” *Blum v.*
 2 *Stenson*, 465 U.S. 886, 895-96 and n.11 (1984). In general, the “relevant community” for purposes of
 3 determining the prevailing market rate is the “forum in which the district court sits.” *Camacho v.*
 4 *Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Thus, when a case is filed in the Eastern
 5 District of California, this District “is the appropriate forum to establish the lodestar hourly rate...” *See*
 6 *Jadwin v. County of Kern*, 767 F. Supp. 2d 1069, 1129 (E.D. Cal. 2011).

7 The fee applicant bears a burden to establish that the requested rates are commensurate “with
 8 those prevailing in the community for similar services by lawyers of reasonably comparable skill,
 9 experience, and reputation.” *Blum*, 465 U.S. at 895 n.11. The applicant meets this burden by
 10 producing “satisfactory evidence—in addition to the attorney’s own affidavits—that the requested rates
 11 are in line with those prevailing in the community for similar services by lawyers of reasonably
 12 comparable skill, experience and reputation.” *Id.*; *see also Chaudhry v. City of Los Angeles*, 751 F.3d
 13 1096, 1110-11 (9th Cir. 2014) (“Affidavits of the plaintiffs’ attorney[s] and other attorneys regarding
 14 prevailing fees in the community … are satisfactory evidence of the prevailing market rate”); *Ketchum*
 15 *v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (courts must identify the “prevailing hourly rate” for the
 16 community). However, “rates, other than those of the forum, may be employed if local counsel was
 17 unavailable, either because they are unwilling or unable to perform because they lack the degree of
 18 experience, expertise, or specialization required to handle properly the case.” *Gates v. Deukmejian*,
 19 987 F.2d 1392, 1405 (9th Cir. 1992). Plaintiff neither argues nor presents evidence that local counsel
 20 was unavailable to litigate his claims in this action. Thus, the Court must determine whether the hourly
 21 rates requested by counsel are reasonable for the Fresno Division of the Eastern District.

22 *a. Rates for counsel*

23 To calculate their lodestar, LippSmith LLP applied the hourly rates of \$950 for partners with
 24 16.2 years of experience and \$1,200 for the co-founders of LippSmith LLP, who each had 22.2 years
 25 of experience practicing law. (Doc. 82-1 at 5, ¶ 5 and Table 1.) Lawyers for Justice applied hourly
 26 rates ranging from \$575 for a senior attorney to \$1,495 for a managing attorney/ shareholder. (Doc.
 27 82-2 at 7, ¶ 12.) Mr. LippSmith asserts:

28 I believe the rates set forth in Table 1 represent reasonable contingency
 fee rates for each Timekeeper that this Court should use to evaluate

1 whether the Attorney Fees provided in this Settlement are fair and
 2 reasonable. The contingency hourly rates for the Timekeepers are
 3 generally higher than prevailing billable hourly rates because “[l]awyers
 4 operating in the marketplace can be expected to charge a higher hourly
 rate when their compensation is contingent on success than when they
 will be promptly paid, irrespective of whether they win or lose.” *Blum v.
 Stenson*, 465 U.S. 886, 903 (1984).

5 (Doc. 82-1 at 6, ¶ 17.) Mr. St. John asserts that the hourly rates for LFJ “are the reasonable and usual
 6 hourly rates for the referenced attorneys’ services in wage and hour class action cases handled by
 7 Lawyers for Justice, PC, and are commensurate with rates charged in the community by other
 8 plaintiffs-side and defense-side attorneys in this practice area.” (Doc. 82-2 at 7, ¶ 13.) Notably,
 9 however, Class Counsel are located in the Central District and appear to refer to that community.
 10 They do not present any evidence that the Eastern District previously approved of these hourly rates or
 11 provide any evidence from other attorneys from *this* forum regarding the hourly rates awarded to
 12 lawyers of comparable experience. *See Chaudhry*, 751 F.3d at 1110-11.

13 The Court performed a comprehensive survey of attorney fees awarded in the Eastern District
 14 and finds hourly rates generally range from \$200 to \$750, with hourly rates exceeding \$600 reserved
 15 for attorneys who have been practicing approximately 30 years. *See, e.g., Terry v. Wasatch Advantage
 16 Grp., LLC*, 2025 WL 406589, at *5 (E.D. Cal. Feb. 2, 2025) (evaluating hourly rates requested in a
 17 class action, and observing the Eastern District has “awarded fees based on hourly rates between \$600
 18 and \$700 per hour for attorneys with thirty years’ experience or more who represent clients in class
 19 actions and complex civil cases”); *Mostajo v. Nationwide Mut. Ins. Co.*, 2023 WL 2918657, at *11
 20 (E.D. Cal. Apr. 12, 2023) (approving of “hourly rates ranging from \$650 through \$750” for “attorneys
 21 with over thirty years of experience” for purposes of calculating a lodestar). For this reason, the rates
 22 applied by LippSmith LLP and LFJ to calculate the lodestar exceed those typically awarded in the
 23 local forum for lawyers of comparable experience. *See Terry*, 2025 WL 406589, at *5; *see also*
 24 *Schmidt v. Vision Serv. Plan*, 2025 WL 708535, at *11 (E.D. Cal. Mar. 3, 2025) (reviewing hourly
 25 rates in a wage-and-hour class action and finding the request rates for partner attorneys of \$1,155 to
 26 \$1,295 and associate rates of \$685 to \$985 were “significantly higher than those previously accepted
 27 by this Court as reasonable”). Accordingly, the hourly rates for counsel must be adjusted to those of
 28 the local forum.

Recently, this Court determined that “[a]ttorneys with less than ten years’ experience usually are awarded fees based on hourly rates between \$200 and \$400.” *Terry*, 2025 WL 406589, at *5; *see also Siafarikas v. Mercedes-Benz USA, LLC*, 2022 WL 16926265, at *3 (E.D. Cal. Nov. 10, 2022) (approving the hourly rate of \$250 for an attorney “who has practiced law for three years”); *Am. Multi-Cinema, Inc. v. Manteca Lifestyle Ctr., LLC*, 2024 WL 1312209, at *3 (E.D. Cal. Mar. 26, 2024) (reducing the requested hourly rates to \$375 for associate attorneys). With these parameters in mind, the rate for Tara Zabehi, who has been in practice for 8 years, is adjusted to \$400; and the rate for Brittany Shaw, who has been in practice for 5 years, is adjusted to \$350. The hourly rates for Brian St. John and Elizabeth M.R-H Parker-Fawley—senior attorneys with LFJ, who have been practicing for about 10 years—are adjusted to \$425.

For attorneys with approximately 12-19 years of experience, the Court has awarded rates of approximately \$450-500 per hour. *See, e.g., Diaz v. United Parcel Service, Inc.*, 2023 WL 8622325, at *17 (E.D. Cal. Dec. 12, 2023) (applying a \$450 hourly rate for a partner with 14 years of experience, for purposes of calculating the lodestar in a wage-and-hour class action); *Olguin v. FCA US LLC*, 2024 WL 4012103, at *7 (E.D. Cal. Aug. 30, 2024) (reviewing fees awarded in this district and awarding the hourly of \$450 to attorney practicing for approximately 13 years); *see also Terry*, 2025 WL 406589, at *5. Both Randolph Greenwald, a former attorney with LFJ, and Arby Aiwasian, currently with LFJ, had approximately 14.7 years of experience while working on this matter. (Doc. 82-1 at 5, ¶ 5.) Celene Chan Andrews and Jaclyn L. Anderson, lawyers with LippSmith LLP, each report 16.2 years of experience through working on this action. (*Id.*) Based upon their reported experience, for purposes of calculating the lodestar, the hourly rates for Randolph Greenwald and Arby Aiwasian are adjusted to \$450; and the hourly rates of Celene Chan Andrews and Jaclyn Andreson are adjusted to \$475.

Finally, rates of approximately \$500 or more are reserved for attorneys who have 20 years or more in practice. *See, e.g., Terry*, 2025 WL 406589, at *5 (observing that in this district, hourly rates for class action and complex civil litigation lawyers may range from \$500 to \$600 per hour “for attorneys with multiple decades’ experience”); *see also Siafarikas v. Mercedes-Benz USA, LLC*, 2022 WL 16926265, at *3 (E.D. Cal. Nov. 10, 2022) (approving the hourly rate of \$500 for an attorney who had practiced law for 21 years); *Garybo v. Leonardo Bros.*, 2021 WL 449350, at *5 (E.D. Cal. Sept. 30,

1 2021) (adopting the recommended hourly rate of \$500 for attorneys in a wage-and-hour class action
 2 who were admitted to practice for 20 years or more). Graham LippSmith and MaryBeth LippSmith
 3 each report they were admitted to practice in 2002, and Edwin Aiwasian was admitted to practice in
 4 2004. (Doc. 82-1 at 5, ¶ 5.) Based upon the information provided regarding their years of
 5 experience—as well as acknowledging their status as co-founders of LippSmith LLP and the managing
 6 attorney at LFJ, respectively—the Court finds an adjusted hourly rate of \$575 is appropriate for
 7 Graham LippSmith, MaryBeth LippSmith, and Edwin Aiwasian.

8 *b. Rate for non-attorney staff*

9 To calculate their lodestar, Class Counsel applied the hourly rate of \$300 for Niki B. Smith, a
 10 paralegal who performed work on this action. (Doc. 55-6 at 2.) However, this amount exceeds the
 11 hourly rates for even the most experienced paralegals in the Eastern District.

12 Paralegal rates within the Eastern District range from \$100 to approximately \$200 per hour,
 13 depending on both education and experience. *See, e.g., Terry*, 2025 WL 406589, at *5 (approving a
 14 \$200 hourly rate as reasonable for a paralegal who held a master’s degree in statistics and had more
 15 than 20 years of experience); *Bernal v. Sacramento Cty. Sheriff Dep’t*, 2023 WL 2504895, at *5 (E.D.
 16 Cal. Mar. 14, 2023) (rates of “approximately \$100 per hour” were reasonable for paralegals in this
 17 district); *Gilbert v. Jabar Wireless Inc.*, 2023 WL 3055108, at *9 (E.D. Cal. Apr. 24, 2023) (finding
 18 the hourly rate of \$115 was reasonable for “experienced paralegals”); *Block v. Narwal*, 2022 WL
 19 17455502, at *9 (E.D. Cal. Dec. 6, 2022) (finding the requested rate of \$115 was reasonable for
 20 paralegals who had more than ten years of experience). Class Counsel report that Niki Smith has 16
 21 years of experience as an assistant and 11 years as a paralegal. (Doc. 82-1 at 5, ¶ 5.) Based upon her
 22 significant experience, the Court finds the rate of \$150 is reasonable.

23 3. Calculation and cross-check

24 Based upon the survey of fees awarded in the Eastern District and the Court’s own knowledge,
 25 the adjusted rates are reasonable and align with prevailing local market rates. *See Terry*, 2025 WL
 26 406589, at *5; *Garybo*, 2021 WL 449350, at *5; *see also Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th
 27 Cir. 2011) (concluding “the district court did not abuse its discretion either by relying, in part, on its
 28 own knowledge and experience” to determine reasonable hourly rates). With the rate adjustment and

1 deduction of future time, set forth above, the lodestar totals **\$325,467.50**:

Legal Professional	Hours	Rate	Lodestar
<i>LippSmith LLP</i>			
Graham B. LippSmith	141.3	\$575	\$81,247.50
MaryBeth LippSmith	106.3	\$575	\$61,122.50
Celene Chan Andrews	141.3	\$475	\$67,117.50
Jaclyn L. Anderson	34.0	\$475	\$16,150.00
Niki B. Smith	75.6	\$150	\$11,340.00
<i>Lawyers for Justice PC</i>			
Edwin Aiawazian	43.2	\$575	\$24,840.00
Arby Aiawazian	13.9	\$450	\$6,255.00
Elizabeth M. R-H Parker Fawley	4.9	\$425	\$2,082.50
Brian St. John	27.1	\$425	\$11,517.50
Tara Zahebi	0.8	\$400	\$320.00
Brittany Shaw	84.4	\$350	\$29,540.00
Randolph Greenwald	3.2	\$450	\$1,440.00
Jeffrey D. Klein	29.4	\$425	\$12,495.00
<i>Future time</i>	0	n/a	n/a
Total			\$325,467.50

13
14 Thus, the fees requested exceed the lodestar by more than \$300,000.00, and the lodestar cross-check
15 does not support the fees in the amount requested by Class Counsel. Rather, the cross-check would
16 support a downward departure from the benchmark.

17 **III. Amount of Fees to be Awarded**

18 As discussed above, the time and labor required, the risks undertaken—which are common to
19 wage-and-hour class actions, and the results obtained support an award at the benchmark of 25% from
20 the common fund. Although the length of the professional relationship and lodestar cross-check
21 support a downward departure, the Court finds these factors are outweighed by the remaining factors
22 identified by the courts to evaluate the reasonableness of a fee request. *See Kerr*, 526 F.2d at 70; *see also Laffitte*, 1 Cal.5th at 489. Accordingly, the Court awards fees at the benchmark of 25% of the
23 common fund of \$1,906,745.14, or a total of **\$475,000.00**.¹⁵ This modified amount is fair, adequate,
24 and reasonable as required under Rule 23.
25

26 ///
27

28 ¹⁵ The Court considers the common fund to be \$1,900,000.00, because the parties agreed that the additional
\$6,745.14 is specifically designated to payments for the Omitted Class Members. (*See Doc. 76 at 5*)

REQUESTS FOR COSTS

I. Litigation Costs

“There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund.” *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (citation omitted). Generally, reimbursement of taxable costs is governed by 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54. Attorneys may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters. See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). Costs may also be awarded under California law to an individual who prevails on a PAGA claim. See Cal. Lab. Code § 2699(g).

The Settlement provides that Class Counsel may seek “reasonable litigation costs and expenses up to \$23,000.” (Doc. 70-2 at 7.) In the pending motion, Class Counsel originally requested litigation expenses in the amount of \$21,597.01. (Doc. 82 at 10, 26; Doc. 82-1 at 8, ¶ 20.) Reviewing the evidence submitted, the Court observed this amount included future costs. (Doc. 87, citing Doc. 82-1 at 8, ¶ 20.) The Court ordered Class Counsel to file supplementary evidence regarding the litigation expenses—including an itemization of costs—and noted that “the Court will not award costs for *anticipated* costs, but rather actual litigation expenses that were incurred.” (*Id.* at 1, emphasis in original.) In response, Class Counsel provided itemization of costs from LippSmith LLP and LFJ. (Doc. 88-1 at 3; Doc. 88-2 at 5.) Class Counsel also indicate they “do not seek reimbursement of any anticipated costs,” which related to travel associated with the final approval hearing vacated by the Court.¹⁶ (Doc. 88 at 3.) Accordingly, Class Counsel request litigation expenses in the amount of \$20,897.01. (*Id.* at 4.)

The advanced costs identified by Class Counsel total \$18,276.77 from LippSmith LLP and \$2,620.24 from LFJ, for a total of \$20,897.01. (Doc. 88-1 at 3; Doc. 82-2 at 5, 42.) The advanced costs include fees for filing, two mediation sessions, and mailing. (Doc. 82-2 at 42; Doc. 88-1 at 3.) Previously, this Court observed that costs “including filing fees, mediator fees, ground transportation, copy charges, computer research, and database expert fees … are routinely reimbursed” in class action

¹⁶ Class Counsel's request for an award of future expenses in the amount of \$700.00 is deemed **WITHDRAWN**. (Doc. 88 at 3.)

1 cases. *Alvarado v. Nederend*, 2011 WL 1883188 at *10 (E.D. Cal. Jan. May 17, 2011); *see also*
 2 *Ontiveros*, 303 F.R.D. at 375 (finding costs including mediation, mileage, court fees, research, and
 3 expert fees were “reasonable litigation fees” and approving class counsel’s request for costs). Because
 4 the costs requested are reasonable and the type routinely approved in wage-and-hour class action
 5 settlements, the request for litigation expenses is **GRANTED** in the amount of **\$20,897.01**.

6 **II. Costs of Settlement Administration**

7 The Court appointed Simpluris, Inc., to serve as the Settlement Administrator. (Doc. 73 at 42.)
 8 Eric Springer, the Director of Client Services for Simpluris, acknowledged that the responsibilities of
 9 the company for settlement administration of this action include:

10 (a) establishing and maintaining a fund for Class Members; (b) calculating
 11 all amounts due to each Class Member pursuant to the Settlement; (c)
 12 processing checks and mailing payments to Class Members; (d) preparing,
 13 processing, and filing all applicable tax forms and tax returns; (e)
 14 establishing and maintaining a calendar of administrative deadlines and
 15 responsibilities; (f) printing and mailing by First-Class Mail the Notice of
 16 Pendency of a Class Action Settlement (“Notice of Settlement”) to Class
 17 Members in English; (g) conducting a National Change of Address
 18 (“NCOA”) database search prior to mailing the Notice of Settlement to
 Class Members and performing a skip-trace on any Notice of Settlement
 returned as Undeliverable; (h) receiving and validating written requests to
 be excluded from the Settlement (“Requests for Exclusion”), written
 objections to the Settlement, and disputes regarding the number of
 workweeks or pay periods that a Class Member worked for Defendant; (i)
 providing weekly reports to counsel; and (j) performing any other tasks
 necessary to carry out its responsibilities as set forth in the Settlement, as
 the Parties mutually agree, or as the Court orders Simpluris to perform.

19 (Doc. 70-5 at 3, Springer Decl. ¶ 8; *see also* Doc. 70-2 at 9-10, ¶ 1.31.) For these tasks, Simpluris
 20 determined the “project has a fixed rate of \$8,837.00.” (*Id.* at 4, ¶ 13.) Accordingly, the Settlement
 21 provides that settlement administration costs “are not to exceed \$9,000.00,” and the Court preliminarily
 22 authorized costs up to \$9,000.00. (Doc. 70-2 at 9, ¶ 1.31; Doc. 73 at 43.)

23 After the parties identified the two Omitted Class Members, the Settlement Administrator
 24 “advised the Parties that the total Settlement Administration Costs, including additional costs
 25 associated with administering the Settlement with respect to the Omitted Class Members, will not
 26 exceed the amount allocated in the Preliminary Approval Order.” (Doc. 76 at 5, ¶ N.) As a result, no
 27 additional costs would result from the additional service of the Class Notice. (*Id.*) Plaintiff now
 28 requests a payment of \$8,837.00 to the Settlement Administrator. (See Doc. 82 at 13; Doc. 82-5 at 4.)

Based upon the information provided regarding the tasks performed by the Settlement Administrator—and the continuing responsibilities with the calculation of the shares of the Settlement Class and PAGA Aggrieved Employees, issuance and mailing of those settlement payments, and any necessary tax reporting on such payments—the Court finds the requested Settlement Administration costs are reasonable. Thus, a payment of **\$8,837.00** for the Settlement Administrator from the gross fund is **APPROVED**.

CONCLUSION AND ORDER

Based upon the foregoing, the Court finds the “Joint Stipulation of Class Action and PAGA Settlement” is fair, adequate, and reasonable. The factors set forth under Rule 23 and Ninth Circuit precedent weigh in favor of final approval of the settlement agreement. Thus, the Court **ORDERS:**

1. Plaintiff's request for certification of the Settlement Class is **GRANTED**, and the class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from September 15, 2016, through April 11, 2024, and who reside in California.
 2. Final approval of the Settlement Agreement—with the modifications to ¶¶ 4.5.6, 4.6.7, 4.6.9, 4.9 and 4.11.4, as identified in the Court's order dated October 23, 2024 (Doc. 73)—is **GRANTED**.
 3. The PAGA award in the amount of **\$100,000.00** from the Maximum Settlement Amount, including payment of \$75,000.00 to California's Labor and Workforce Development Agency and \$25,000.00 to aggrieved employees, is **APPROVED**.
 4. The request for a class representative service payment for Plaintiff is **GRANTED** in the modified amount of **\$5,000.00**.
 5. Class Counsel's motion for fees is **GRANTED** in the modified amount of 25 percent of the common fund, which totals **\$475,000.00**.
 6. Class Counsel's request for litigation costs and expenses is **GRANTED** in the amount of **\$20,897.01**.

11

7. Settlement Administration costs in the amount of **\$8,837.00**, to be paid from the Maximum Settlement Amount, are **APPROVED**.
 8. The Court **DECLINES** to appoint Legal Aid at Work as the cy pres beneficiary, without prejudice to renewal of the request following disbursement of the settlement shares to Class Members and Aggrieved Employees.
 9. The action is **DISMISSED** with prejudice, with each side to bear its own costs and attorneys' fees except as otherwise provided by the Settlement and ordered by the Court.
 10. The Clerk of Court is **DIRECTED** to close this action.
 11. The Court retains jurisdiction to consider all further applications arising from or related to the Settlement Agreement.

IT IS SO ORDERED.

Dated: September 20, 2025

Jennifer L. Thurston
UNITED STATES DISTRICT JUDGE